TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 403

CHARLEY SINGLETON, MAGGIE DAVIS, AND GEORGE DAVIS, PETITIONERS,

vs.

EDITH CHEEK, NÉE JACKSON, JEWEL BRAZIEL, NÉE JACKSON, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

PETITION FOR CERTIORARI FILED SEPTEMBER 23, 1931

CERTIORARI GRANTED NOVEMBER 2, 1931

(36,217)

( )

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INDEX.

	Original	Print
Proceedings in supreme court of Oklahoma	1	1
Præcipe for transcript of record	1	1
Petition in error	2	1
Case-made from district court of Craig County	5	3
Caption	8	3
Record from county court of Craig County	9	4
Order approving final report, etc	9	4
Application by George Davis et al. for distribution.	14	6
Final report of administrator	17	8
Petition for determination of heirs	20	9
Application of Charles Singleton for distribution	26	12
Petition of brother and sisters of Lee Ray Jackson.	29	14
Stipulation and agreed statement of facts	31	14
Journal entry of judgment	45	22
Notice of appeal of George Davis et al	49	23
Appeal bond of Maggie Davis (omitted in printing)	51	
Appeal bond of George Davis (omitted in printing)	53	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 10, 1931

	Original	Print
Appeal bond of Charley Singleton (omitted in printing)	55	
Notice of appeal of Guy Patten, administrator	57	26
Notice of appeal of Edith Cheek et al	60	27
Order accepting notice of appeal, etc	61	28
Administrator's bond	63	29
Certificate of judge (omitted in printing)	66	
Certificate of clerk (omitted in printing)	66	
Minute entries	68	30
Additional stipulation of facts	70	31
Request for findings	72	32
Minute entry of judgment, etc	74	33
Motion for new trial	76	34
Journal entry of judgment	79	34
Reporter's certificate (omitted in printing)	82	
Court clerk's certificate (omitted in printing)	83	
Certificate of attorney for plaintiffs in error (omitted in printing)	84	
Tender of case-made	85	36
Acceptance of service of case-made	86	37
Stipulation re case-made	87	37
Notice of settlement of case-made	88	38
Certificate of trial judge	89	38
Journal entry of submission	91	40
Journal entry of judgment	92	40
Opinion, Reid, commissioner	93	41
Petition for rehearing	107	53
Order granting rehearing	111	56
Journal entry of submission	112	56
Order vacating order granting rehearing and denying same	113	57
Application for stay of mandate	114	57
Order staying mandate	115	58
Order granting leave to file application for leave to file second petition for rehearing	116	58
Application for leave to file second petition for rehearing	117	59
Second petition for rehearing	118	59
Order granting second petition for rehearing	124	66
Journal entry of judgment	125	66
Opinion, Clark, J	126	67
Application for time to file petition for rehearing	132	72
Order giving time to file petition for rehearing	135	73
Order granting further time to file petition for rehearing	136	74
Petition for rehearing	137	74
Certificate of disqualification of Justice W. H. Kornegay	153	80
Appointment of special justice	156	81
Oath of W. C. Bruton, special justice	157	82
Journal entry of submission	158	83
Order denying petition for rehearing	159	83
Application for stay of mandate	160	83
Order staying mandate	162	84
Certificate of clerk (omitted in printing)	164	
Order allowing certiorari		87

[fol. 1]

IN SUPREME COURT OF OKLAHOMA

No. 17,748

In re Estate of Lee Ray Jackson, Deceased

CHARLEY SINGLETON, MAGGIE DAVIS, and GEORGE DAVIS, Plaintiffs in Error,

vs.

EDITH CHEEK, née JACKSON; JEWEL BRAZIEL, née JACKSON; Emmett Jackson, by W. M. Tynor, Guardian, and Guy Patten, Administrator, Defendants in Error

PRÆCIPE FOR CERTIFIED TRANSCRIPT OF RECORD—Filed July 29, 1931

The Clerk of the Supreme Court of the State of Oklahoma will please prepare, certify, and furnish to the undersigned a full, true and correct transcript of the record in the above styled cause, including the proceedings, orders and opinions in the Supreme Court of the State of Oklahoma, all for transmission to the Supreme Court of the United States of America, on petition for a writ of certiorari.

Bierer & Bierer, Attorneys for Plaintiffs-in-Error.

AGCB, JR:MH.

[File endorsement omitted.]

[fol. 2] [File endorsement omitted]

In Supreme Court of Oklahoma

[Title omitted]

PETITION IN ERROR—Filed Sept. 3, 1926

The plaintiffs in error represent and show to the court that in the District Court of Craig County, Oklahoma, on appeal from the County Court of Craig County in the mat-

ter of the distribution of the Estate of Lee Ray Jackson, on May 3, 1926, a judgment was entered reversing the judgment of the county court awarding to plaintiffs in error $455.05, and affirming a judgment of the county court awarding to defendants in error, Cheek, Braziel and Jackson, the remainder $8925.00 the judgment ordering the County Court to distribute all the fund to said defendants in error. That exception- were taken by the plaintiffs in error to the judgment and they filed motion for new trial and the motion was overruled and they excepted, and gave notice of intention to appea' to the Supreme Court, and time was allowed to make and serve case-made and the same was duly served, and settled and signed and filed and certified on July 30, 1926, and is herewith filed. The Plaintiff in Error says that there were errors in the proceedings to their prejudice and they excepted thereto. They make the following assignments of error so committed:

I

The court erred in rendering judgment denying them any portion of the fund.

II

The court erred in awarding all the fund to the claimants [fol. 3] and defendants in error, Cheek, Braziel and Jackson.

III

The court erred in ordering the County Court to distribute all the fund to the claimants Cheek, Braziel and Jackson.

IV

The court erred in overruling the motion for new trial filed by the plaintiffs in error.

V

The court erred in overruling the request of plaintiffs in error to award the fund to them.

VI

The court erred in refusing to find that the judgment of the county court rendered October 9th, 1922 was binding on the court and conclusive as to the rights of the parties.

VII

The court erred in holding that defendants in error, Jackson, Cheek and Braziel, were heirs of Lee Ray Jackson, and entitled to the fund as well as in holding that they were entitled to any portion of the fund.

VIII

The court erred in holding that plaintiffs in error were not the heirs of Lee Ray Jackson deceased, and entitled to the fund as such heirs.

IX

The court erred in holding that the plaintiffs in error were not entitled to the fund as being heirs of the beneficiary of the insurance, Mary Singleton, the wife of Lee Ray Jackson at the time of his death, and the heir of their minor child, Lee Roy Jackson.

Wherefore plaintiffs in error ask the court to reverse with directions for the County court to distribute the funds to the plaintiffs in error.

(Signed) W. H. Kornegay, Attorney for Plaintiffs in Error.

[fols. 4-7] [File endorsement omitted.]

[fol. 8] In District Court of Craig County, State of Oklahoma

No. 4742

In the Matter of the Estate of Lee Ray Jackson, Deceased; Guy Patten, Administrator

Charley Singleton, Maggie Davis, and George Davis, Appellants or Plaintiffs in Error,

vs.

Edith Cheek, née Jackson; Jewel Braziel, née Jackson; and Emmett Jackson, a Minor, Appellees or Defendants in Error

Case-made—Filed July 30, 1926; Filed in Supreme Court Sept. 3, 1926

Caption

Be it remembered that on March 22, 1926, this cause was lodged in the District Court of Craig County, Oklahoma, on

appeal from the County Court of said County, by the filing herein of a transcript from county court; which said transcript from county court is, together with all endorsements thereon, in the words and figures following, to-wit:

[fol. 9] IN COUNTY COURT OF CRAIG COUNTY, OKLAHOMA

No. 3233, Probate

In the Matter of the Estate of Lee R. Jackson, Deceased, MARY LUCINDIA JACKSON, Administratrix.

ORDER, JUDGMENT, AND DECREE APPROVING FINAL REPORT FINDING AND DECLARING HEIRS, MAKING DISTRIBUTION, AND CLOSING THE CASE—Filed Oct. 9, 1922

Now on the 9th day of October, 1922, comes on for hearing in open court the final report and petition for distribution heretofore made and filed in this case on the — day of May, 1922, and it being first proven to the court that notice of hearing on said report and petition has been given in the manner and form, and for the time required by law, which proof by the court approved.

The court now finds, adjudges and declares that Lee R. Jackson died intestate, a resident of Craig County Oklahoma, on the 23rd day of March, 1921, and that he is one and the same person as Lee Ray Jackson that subsequent thereto, and on May 5, 1921, Mary Lucindia Jackson was appointed administratrix of the estate; that she qualified [fol. 10] as such and received letters of administration and thereafter gave notice to creditors to present claims, that said notice was in the manner and form and for the time required by law and is now approved; that said administratrix fully paid all the indebtedness existing against the estate and has faithfully and honestly administered this trust and that her report made and filed in this case as aforesaid, is without objection; and that the same should be approved.

The Court further finds that Lee R. Jackson is one and the same person as Lee Ray Jackson; that he left him surviving, his wife, Mary Lucindia Jackson and James Lee Roy Jackson; that the said James Lee Roy Jackson was his child, seven (7) months old at the time of the death of the father Lee R. Jackson and that these (the widow and

child) were his sole and only heirs at law, and upon his death succeeded to all right, title and estate of the property, both real and personal of the said Lee R. Jackson deceased; and that as such heirs, they each took an undivided one-half (½) interest.

The Court further finds that after the death of Lee Ray Jackson and to-wit: About March 1922, the child James Lee Roy Jackson, died at the age of about 18 months; that said child, James Lee Roy Jackson, has at all times been cared for, supported and maintained by its mother Mary Lucindia Jackson, and that said child died without issue, and single and unmarried and without having incurred for [fol. 11] necessaries, any debts of any kind or character; that were not paid for, satisfied and discharged by the mother, Mary Lucindia Jackson; that under Section 6463 R. L. of Oklahoma 1910, the court has authority to make distribution without further administration upon the interest of the said deceased infant, and the court now finds that Mary Lucindia Jackson succeeded to one-half interest in all the property of the deceased Lee Ray Jackson and that James Lee Roy Jackson having died before the settlement of this estate; that his interests ascended to, and vested to his mother Mary Lucindia Jackson; and that she is now the sole and only heir of Lee Ray Jackson, deceased.

It is therefore considered, ordered, adjudged and decreed by the Court that the final report made and filed in this case by the administratrix, be and the same is hereby approved, ratified and confirmed and it is further adjudged and decreed, that Lee Ray Jackson died intestate in Craig County, Oklahoma, March 23, 1921, and left him surviving as his sole and only heirs at law, his wife Mary Lucindia Jackson and his son James Lee Roy Jackson; that he the said *descendant* never had any other children or descendants and that all of his property, both real and personal and wherever situate, descended to and vested in Mary Lucindia Jackson his widow, and James Lee Roy Jackson, his son and that James Lee Roy Jackson died intestate March 1922, single and unmarried and at about the age of 18 months; and that all debts of necessity incurred for said [fol. 12] minor, James Lee Roy Jackson, have been paid by the mother and that upon the death of the said infant all his right, title, interest and estate in and to said property of their deceased father ascended to and vested in his mother and that she is now the sole and only heir at law,

and the owner of all the interest of all the property of her deceased husband Lee R. Jackson, who is the same as Lee Ray Jackson.

It has been further adjudged and decreed that this estate has been fully administered and that the assets thereof have been fully accounted for; that the administratrix has fully, faithfully and honestly discharged the duties of the trust and is entitled to, and is hereby granted her released, and discharged as such administratrix, and her bonds and bondsmen from time to time, given and as such are now and hereby released, discharged, absolved and acquitted of and from all liabilities in the trust and this case is ordered closed.

Frank L. Haymes, County Judge.

[fol. 13] [File endorsement omitted.]

[fol. 14] In County Court of Craig County

No. 3233

In the Matter of the Administration of the Estate of Lee R. Jackson, Deceased, Guy Patton, Administrator de Bonis Non.

Application by George Davis and Maggie Davis for Distribution—Filed Dec. 21, 1925

George Davis and Maggie Davis represent to the court that the intestate Lee R. Jackson died March 1921 and his estate was administered on in this court in this case by his widow Mary Jackson nee Davis and this court on the 9th day of October, 1922 made an order vesting all property of the estate in Mary Singleton the widow in right of herself and in right of a minor child then deceased of the said Mary Jackson and the intestate Lee R. Jackson. That all creditors were duly paid and the expenses of administration were paid, and there are no creditors of the estate. That said Lee R. Jackson died in Craig County, Oklahoma and having his residence therein and being domiciled therein, and intestate on March 21, 1921 leaving as his sole heirs his wife Mary Jackson, and a minor child by name James Leroy Jackson, who was seven months old when his father died,

and said James Leroy Jackson remained in the custody of his mother Mary Jackson till he died in March 1922, leaving as his sole heir his mother Mary Jackson who died intestate March 1923, and said James Leroy Jackson re- [fol. 15] sided in Craig County all his life and the said Mary Davis died in Craig County, and domiciled there. That the said Mary Jackson after the death of her husband Lee R, Jackson married Charles Singleton, and left surviving no children, but left surviving her husband Charles Singleton, and her father and mother George Davis and Maggie Davis the applicants. That these are the sole heirs of the deceased. That there is in the hands of Guy Patton administrator de bonis non Nine Thousand Three Hundred and Eight Dollars and four cents, derived from an insurance contract with the United State Government designating Mary Jackson aforesaid as beneficiary on the life of Lee R. Jackson, and belonging to the estate of Lee R. Jackson, and the same is available for distribution on payment of the expenses of the administration de bonis non. That the applicants are entitled to one half of the funds in the hands of the administr-or in equal shares and Charles Singleton is entitled to the other half, as the applicants are advised. Wherefore the applicants ask that the court set a day for the hearing of this petition, not less than 20 days after the filing and that notice be given of the same by publication for two successive weeks in some weekly newspaper and on the hearing the order of distribution be made.

George Davis, Maggie Davis, by W. H. Kornegay, Attorney.

[fol. 16] I, George Davis, on oath do say the statements of the foregoing petition are true.

George Davis, Maggie Davis.

Subscribed and sworn to before me this 17 day of Dec. 1925. —— ——. My commission expires Feb. 18, 1926. (Seal of T. P. Caldwell, Notary Public of Coal County, Oklahoma.)

[File endorsement omitted.]

This application set for hearing Monday Jan. 11th 1926.
[fol. 17] G. P. Fogle, County Judge.

Charged. W. H. Kornegay.

IN COUNTY COURT OF CRAIG COUNTY

[Title omitted]

FINAL REPORT OF ADMINISTRATOR—Filed Dec. 28, 1925

Comes now Guy Patten as administrator de bonis non of the Estate of Lee Ray Jackson, Deceased, and respectfully states unto the Court that he was appointed administrator de bonis non for the purpose of collecting certain moneys due the deceased from the Veterans Bureau and as such has collected and received $9,380.04 from that source and this administrator is advised and believes that is in full set-
[fol. 18] tlement of all claims of the estate of said deceased in said matter and that said money is all the assets, property and effects belonging to said estate.

The administrator further reports to the court that prior to the time of this administrator's appointment there had been a previous administration in this estate in this court and in this case in which notice was given creditors to present claims against said estate and all claims presented were paid and the estate closed; that since then this property belonging to the estate came to the knowledge of the parties interested and this appointment was made solely for the purpose of collecting any money due and that by reason of the condition of the estate as aforesaid no notice is necessary to be given to creditors again and there are no debts to be paid save and except the incidental expenses to this additional administration de bonis non, and this administrator now respectfully reports to the court that the estate is ready for distribution to the heirs, the exact amount on hand being as follows:

Amount collected	$9,380.04
Paid out by order of this court for administrator's bond premium	65.00
Paid Patten & Rye refund advanced as court costs to file this case	10.00
Leaving a balance now on hand	$9,305.04

[fol. 19] The administrator further reports to the court that he has not received any commission or other compensation for his services in this case, nor has there been any attorneys fee paid and in this connection the administrator

states to the court that there was considerable work done by an attorney in getting the case properly prepared and presented to the United States Veterans Bureau and making proof of death and heirship before this administrator was appointed; that these things are stated to the court in order to advise the court and enable him to fix the proper fee for the attorney, as well as fee for the administrator for services in this case.

Respectfully, Guy Patten, Administrator.

Duly sworn to by Guy Patten. Jurat omitted in printing.

[fol. 20] IN COUNTY COURT OF CRAIG COUNTY

[Title omitted]

PETITION FOR DETERMINATION OF HEIRS—Filed Dec. 28, 1925

Comes now Guy Patten as administrator de bonis non, of the estate of Lee Ray Jackson, deceased, and respectfully presents this petition for determination of heirs in this matter in order that moneys now on hand may be distributed and paid to the proper persons entitled under the law to receive the same.

The administrator alleges that Lee Ray Jackson died intestate, a permanent and bona fide resident of Craig County, Oklahoma; that his death occurred at Ketchum in [fol. 21] said County on or about March 23rd, 1921, and at the time of his death he left him surviving as his heirs and next of kin Mary Lucinda Jackson, whose name is also Mary Lucindia Jackson, his wife, and one child only, namely Lee Roy Jackson, who was otherwise known as James Leroy Jackson; that these were the sole and only heirs of the said deceased at that time; that thereafter and before the death of the mother James Leroy Jackson, the child died, his death occurring in Craig County, Oklahoma, in March, 1922, and the said child left him surviving as his sole and only heir his mother, and thereafter the said Mary Lucinda Jackson died in April, 1923, and she at the time of her death was a permanent resident of Craig County, Oklahoma, she at the time of her death had remarried and was Mary Lucinda Jackson Singleton.

The administrator further alleges that the insurance policy from which these moneys were derived was a war risk insurance policy and controlled in its terms, provisions and conditions by the Act of Congress and laws of the United States in force and effect and by the rules and regulations made by the United States Veterans Bureau concerning the payment of said money, and that by the terms and provisions of law in force and effect at the time of the death of the said Lee Ray Jackson, the said insurance was payable in monthly installments to the beneficiary or beneficiaries as provided by the Act of Congress of December 24th, 1919, Chapter 16, Paragraph 15, Stal, Vol. —, the [fol. 22] pertinent part of which section is as follows:

"Death or termination of right of beneficiary after death of insured—If any person to whom such yearly renewable term insurance has been awarded dies, or his rights are otherwise ter-inated after the death of the insured, but before all of the two hundred and forty monthly installments have been paid, then the monthly installments payable and applicable shall be payable to such person or persons within the permitted class of beneficiaries as would, under the laws of the State of residence of the insured, be entitled to his personal property in case of intestacy; and if the permitted class of beneficiaries be exhausted before all of the two hundred and forty monthly installments have been paid, then there shall be paid to the estate of the last surviving person within the permitted class the remaining unpaid monthly installments."

that by the terms and provisions of the aforesaid section the said insurance was payable to Mrs. Mary Lucinda Jackson, otherwise known as Mary Lucindia Jackson Singleton, at the rate of $56.88 from March 31, 1921 to March 30th, 1923, and the aggregate amount of monthly installments has been paid by the Bureau of War Risk Insurance to the administrator of the estate of Mary Lucinda Jackson Singleton, and is no part of the moneys herein mentioned, her estate having received that direct from the Veterans Bureau; that the said designated beneficiary Mary Lucinda Jackson was entitled to receive of the insurance of the said Lee Ray Jackson the monthly installments only so long as the said Mary Lucinda Jackson should live;

[fol. 23] that any unpaid installments remaining after the death of Mary Lucinda Jackson were then payable and by law vested in the next of kin of the insured, according to the laws of descent and distribution of personal property in the State of Oklahoma; that the father of the said Lee Ray Jackson died many years prior to the death of Lee Ray Jackson; that the mother of Lee Ray Jackson died many years prior to the death of the insured; that the only child and descendent of the said Lee Ray Jackson died prior to the death of Mary Lucinda Jackson, widow, and therefore the parents of Lee Ray Jackson being dead and his only descendent being dead, and his widow being dead, his next of kin were his brothers and sisters and they are as follows:

Edith S. Cheek, nee Jackson, sister of Lee Ray Jackson, residence Alba, Texas;

Mary Jewell Braziel, nee Jackson, sister of Lee Ray Jackson, residence Quanah, Texas;

Emmett Jackson, brother of Lee Ray Jackson, the said Emmett Jackson being a minor and W. M. Tynor of Cleora, Oklahoma, is his Guardian.

that the above three, Edith S. Cheek, Mary Jewell Braziel and Emmett Jackson are all the brothers and sisters of Lee [fol. 24] Ray Jackson, deceased, and are all the next of kin of the said Lee Ray Jackson, deceased, there being no deceased brother or sister leaving children;

Therefore the administrator alleges that as a matter of law all of the moneys remaining in the hands of the administrator after the payment of the expenses of this administration should be distributed and paid to the above named brothers and sisters of Lee Ray Jackson, deceased. each taking an undivided one-third interest therein.

Wherefore, premises considered, the petitioner prays that upon a hearing had in this matter and after proper notice given that the final report herein be approved, the heirs of Lee Ray Jackson, deceased, found and judicially determined and declared by this court, and the administrator directed to pay to the persons lawfully entitled to receive the money, the funds in the hands of this administrator for distribution and that upon taking the receipt of each of said persons to whom the court shall direct the money to be paid, and filing the same with this court, that

this administrator be discharged and he and his bonds and bondsmen be released, absolved, and acquitted of and from all liability in the trust.

Guy Patten, Administrator.

[fol. 25] [File endorsement omitted.]

IN COUNTY COURT OF CRAIG COUNTY

[Title omitted]

[fol. 26] APPLICATION FOR DISTRIBUTION—Filed Jan. 11, 1926

Charley Singleton represents and shows to the court that the sole heirs of Lee Ray Jackson whose estate is being administered at the time of his death were his wife Mary Lucinda Jackson and the infant child of Lee Ray Jackson and Mary Jackson. That the said child was seven months old when the deceased Lee Ray Jackson died which happened March 23, 1921. That after the death of the said Lee Ray Jackson his widow Mary Lucinda Jackson nee Davis administered on the estate of said Lee Ray Jackson in the County Court of Craig County in this case No. 3233 and that pending the administration the child whose name was James Leroy Jackson died on April 25th, 1922. That the court in which the probate proceedings was pending on October 9, 1922 made a final order of distribution and settlement of the estate which order vested in the said Mary Lucinda Jackson all the property of the estate of the deceased Lee Ray Jackson in said Mary Jackson nee Davis, as being the heir of the said Lee Ray Jackson and their minor child James Leroy Jackson. That the estate was closed. That subsequently it was ascertained that there was a part of said estate the proceeds of an insurance on the life of the deceased provided by the United States in favor of his said wife and administered by the United States Veteran's Bureau and amounting to the sum of [fol. 27] $9,380.04 which has been paid to the Administrator de bonis non, Guy Patton. That all the debts of the estate were paid in the original administration. That Mary Lucinda Jackson and the applicant inter-married in July 1922

and lived together as man and wife in Craig County till her death, which occurred March 6th, 1923. That said Mary Singleton left surviving her no descendants, but left her husband the applicant and her father and mother George Davis and Maggie Davis, who have made application for distribution in this case, and whose application is set for hearing January 11th, 1926. That the estate of Mary Singleton formerly Mary Lucinda Jackson, nee Davis was administered in this court and on said estate Tom Ward administered, and that November 28th, 1925 the court made an order finding that her sole heirs were this applicant and her father and mother aforesaid, and that this applicant was entitled to one half and the father and mother to the other half. That all debts of said Mary Singleton were paid in said administration, and the applicant is advised that there is no necessity for this administrator to pay to the administrator of said Mary Singleton any portion of the funds in his hands, and that it will save expense to distribute the fund directly to the parties entitled. He therefore joins with said George Davis and Maggie Davis in the application for Distribution, and asks the court after paying the expenses of the administration to at once distribute the funds on hand one half to this applicant, the other half to the father and mother of the deceased Mary Singleton, formerly Mary Lucinda Jackson, nee Davis.

[fol. 28] Charley Singleton. W. H. Kornegay, Attorney.

STATE OF OKLAHOMA,
County of Comanche:

I, Charley Singleton, on oath do say that the statements of the foregoing petition are true.

Charley Singleton.

Subscribed and sworn to before me this 8 day of Jan. 1926. My commission expires Oct. 10, 1927. Jewell Truesdell, Notary Public. (Seal.)

[File endorsement omitted.]

[fol. 29] IN COUNTY COURT OF CRAIG COUNTY

[Title omitted]

PETITION OF BROTHER AND SISTERS OF LEE RAY JACKSON FOR DECLARATION OF HEIRS OF DECEASED—Filed Jan. 16, 1926

Comes now Edith Cheek, nee Jackson, and Mary Jewel Braziel nee Jackson, and Emmett Jackson, and state to the court that we are the only brother and sisters of the said Lee Ray Jackson, deceased; that we have seen a copy of the final report of Mr. Guy Patton as administrator de bonis non of the estate of Lee Ray Jackson, deceased, and we have no objection to offer against the said report and respectfully ask the court to approve the same and to allow the necessary and proper costs of the case including the administrators fees and costs and the attorneys fees and such sum as the court shall deem right and equitable.

We further state that we have seen and read over the petition of the administrator for determination of heirs of Lee Ray Jackson, deceased, and we now state to the court [fol. 30] that the allegations of that petition filed in this case for determination of heirs is true and correct and we and each of us, now and hereby adopt that petition and each and every allegation thereof and join therein as fully as if the same had been signed and subscribed by us and we ask the court to declare that the heirs of Lee Ray Jackson, deceased are as set out in that petition.

Edith Cheek, Jewel Braziel, Sisters of Deceased.
Emmett Jackson, Brother of Deceased.

[File endorsement omitted.]

[fol. 31] IN COUNTY COURT OF CRAIG COUNTY

[Title omitted]

STIPULATION AND AGREED STATEMENT OF FACTS—Filed Jan. 18, 1926

It is mutually stipulated and agreed by and between Edith Cheek, nee Jackson, Jewell Braziel, nee Jackson, and Emmett Jackson, claimants to the money derived from the

War Risk Insurance, issued on the life of Lee Ray Jackson in his life-time, and which money is now in the hands of Guy Patten, as administrator of this estate, on the one side, and George Davis and Maggie Davis, and Charley Singleton, claimants to the same insurance, money, funds and proceeds, on the other side, that the facts are:

That Lee Ray Jackson was a soldier in the United States Army and that a certificate of insurance was issued on his life, in his life time, and by the United States Government, through the Bureau of War Risk Insurance, on September 5th, 1918, while a soldier, and that therein was designated as beneficiary Mary Lucinda Jackson, wife of Lee Ray Jackson; that thereafter and on March 21st, 1921, Lee Ray Jackson, died domicile in and an actual resident of Craig County, Oklahoma, intestate, and left him surviving a minor child named James Leroy Jackson, then about seven (7) [fol. 32] months old, and also left him surviving Mary Lucinda Jackson, his widow; that thereafter about March, 192[illegible] the said James Leroy Jackson, the sole and only child of the insured, died, single un-married and intestate; that thereafter about March 26th, 1923, Mary Lucinda Jackson, died intestate and that at the time of her death she had remarried and was then Mary Lucinda Singleton.

It is further stipulated and agreed by and between the parties hereto that none of the insurance money due under the War Risk Insurance herein was ever paid to the insured or the beneficiary, in their life time, but was due to them and has now been paid as follows: To the administrator of the estate of Mary Lucinda Jackson, who was at the time of her death, Mary Lucinda Singleton, the sum of $1365.12 which accrued between March 31st, 1921, and March 30th, 1923; that the insurance due to the insured because of his permanent disability, in the sum of $455.04, has been paid to Guy Patten, Administrator in this case and that all of the Two Hundred Forty (240) installments of said insurance which have not been paid as aforesaid has been commuted and the value thereof fixed by the United States Bureau of War Risk Insurance of $8925.00 which last named sum has been paid to Guy Patten as Administrator of the estate of Lee Ray Jackson, deceased.

It is further stipulated and agreed that Edith Cheek, nee Jackson and Jewel Braziel, nee Jackson, who is one and the same as Mary Jewel Jackson, and Emmett Jackson, are

[fol. 33] sisters and brother of Lee Ray Jackson, deceased; that Lee Ray Jackson left him surviving neither father nor mother, but did leave him surviving his son, James Leroy Jackson and Mary Lucinda Jackson, his widow; that he did not leave him surviving any other child or descendant; that the child, James Leroy Jackson, was the child of Mary Lucinda Jackson, the beneficiary of this insurance.

It is further stipulated and agreed that George Davis and Maggie Davis are the parents of Mary Lucinda Jackson, who is one and the same as Mary Lucinda Singleton, and that Charley Singleton is the surviving husband of Mary Lucinda Jackson Singleton, that neither Maggie Davis nor George Davis, nor Charley Singleton are any blood kin to the insured.

It is further stipulated and agreed that Mary Lucinda Jackson, the widow of the insured Lee Ray Jackson, died, the wife of Charley Singleton, on March 26th, 1923, intestate, and a resident of Craig County, Oklahoma, and that prior to her death, the child of said Mary Lucinda Jackson, or Singleton, died intestate and a resident of Craig County, Oklahoma.

It is further stipulated and agreed that Mary Lucinda Jackson administered on the estate of Lee Ray Jackson in this Court and in this case and that this Court in the process of the administration of the estate of said Lee Ray Jackson received and acted upon the final report of the said Mary Lucinda Jackson and duly found that the said Mary Lucinda Jackson, or Mary Lucinda Jackson, later [fol. 34] Mary Lucinda Singleton, was entitled to all of the estate of the deceased Lee Ray Jackson, one — (½) in her own right and the other one-half (½) in the right of the minor child of the deceased Lee Ray Jackson and the said Mary Lucinda Jackson, said decree being entered on October 9th, 1922, and being of record in this proceeding at this time.

It is further stipulated and agreed that James Leroy Jackson, the child of Lee Ray Jackson and Mary Lucinda Jackson Singleton was in the custody of Mary Lucinda Singleton and had been during all his life; that he was seven (7) months old when his father died and about eighteen (18) months old when he died.

It is further stipulated that an official communication from the United States Veteran's Bureau, of Washington,

D. C. under date of April 4, 1924, to W. T. Rye, Attorney at Law, Vinita, Oklahoma, is as follows:

United States Veterans Bureau, Washington

April 4, 1924.

In reply refer to C. 322, C-451 941, Lee Ray Jackson, Pvt. Co. C., 329 Inf. WMC-JT.

Hon. W. T. Rye, Vinita, Oklahoma:

[fol. 35] DEAR SIR: The records on file in this office show that Mary Lucinda Jackson Singleton, widow of the above named deceased, was receiving compensation for the benefit of herself and child, James Le-Roy Jackson at the rate of $35.00 per month, until June 30, 1923. If she was remarried after that date there will be certain sums due her estate to be settled with the administrator. The Bureau must have certified copies of the public record of the death of Mrs. Singleton and of her child James LeRoy Jackson.

Upon reconsideration of the insurance feature of this claim and by virtue of recent amendment to the War Risk Insurance Act, we find that there is now in force insurance in the amount of $9,892.74, payable at the rate of $66.88 per month to the estate of the widow from March 23, 1921 to the date of her death, after which the payments belong to the heirs of Lee Ray Jackson, deceased. If it is possible, please assist us in locating the relatives of the soldier.

All future communications with reference to this case should bear the full name, rank and organization of the former service man and the C-number, C-451 941, as indicated above.

For the Director: Charles E. Mulhearn, Charles E. [fol. 36] Mulhearn, Assistant Director in Charge of Claims and Insurance Service.

It is further stipulated that an official communication from the United States Veteran's Bureau, of Washington, D. C., under date of June 14th, 1924, to William T. Rye, Farmers State Bank Bldg., Vinita, Oklahoma, is as follows:

United States Veterans Bureau, Washington

June 14, 1924.

In reply refer to O. 322, C-451 941, Lee Ray Jackson, Pvt. Co. C-329, Inf. 144 Co. 11-Bn. KKK/eek.

Mr. William T. Rye, Farmers State Bank Bldg., Vinita, Oklahoma.

DEAR SIR: Acknowledgment is hereby made of your letter of May 24, 1924, with reference to the insurance of the above captioned deceased ex-soldier.

The bureau letter of June 3, 1924 should be in your hands. This informs you fully as to what action is necessary in this case.

All future communications relative to this case should bear the full name, rank and organization of the former service man, and the C-number, C-451 941.

[fol. 37] For the Director: Charles E. Mulhearn, Charles E. Mulhearn, Ass't Director in Charge of Claims and Insurance Service.

It is further stipulated that an official communication from the United States Veteran's Bureau, of Washington, D. C., under date of June 3, 1924, to E. M. Probasco, Lawyer, Vinita, Oklahoma, is as follows:

United States Veterans Bureau, Washington

June 3, 1924.

In reply refer to O. 33, C-451 941, Lee Ray Jackson, Pvt. 44 Co. 11 Rec. Bn. 162d. D. B.

Mr. E. M. Probasco, Lawyer, Vinita, Oklahoma.

DEAR SIR: This will acknowledge receipt of your letter [fol. 38] of May 17, 1924, addressed to this office regarding the above cited claim, enclosing a certified copy of letters of administration issued to Tom Ward, appointing him administrator of the estate of the late Mary Singleton. You also furnished information regarding the surviving relatives of the above named deceased soldier.

The records in this case disclose that Mrs. Singleton, formerly Mrs. Mary Lucinda Jackson, was being paid death compensation at the rate of $35.00 per month at the

time death occurred, which was the amount allowable for herself and one child. It is also apparent that the deceased Mary Singleton was entitled to insurance installments at the rate of $56.88 per month as beneficiary. Therefore, insurance installments at the rate above stated are payable to the estate of Mary Singeton covering the period from April 30, 1921, until her death.

Before settlement can be made of the accrued benefits payable to the estate of Mary Singleton, it is necessary that certified copy of the public death record showing the date of her death be submitted to this office. Also it is absolutely essential that a certified copy of her marriage certificate showing the date of marriage to Mr. Singleton be submitted to this office, and furthermore, death certificate of the child, James LeRoy Jackson, is required in order to complete the records in the case.

Insurance installments at the rate of $56.88 per month are payable to the estate of the above named deceased, Lee Ray Jackson, covering the period from July 31, 1920, to [fol. 39] April 30, 1921. It appears that this amount would warrant the appointment of another administrator of the estate of Lee Ray Jackson. Settlement thereof may be made with an administrator, if such an officer is appointed, and certified copy of letters of administration, together with the address of the administrator, is submitted to this office.

The remaining insurance installments subsequent to the death of Mary Singleton, who was the original beneficiary, are next payable to those relatives of the deceased soldier in the permitted class who would be entitled to take his personal property in accordance with the intestacy laws of his last state of residence upon his death intestate. The required affidavit form for the purpose of securing proof of the surviving relatives of the deceased soldier, the insured, is being transmitted to the interested parties through Congressman E. B. Howard.

Kindly have the required death certificate of Mary Singleton, marriage certificate showing the date of her marriage to Mr. Singleton, and death certificate of James LeRoy Jackson transmitted to this office as promptly as possible in order that complete settlement of this case may be accomplished without delay.

For the Director: Charles E. Mulhearn, Ass't Director in Charge of Claims and Insurance Service.

[fol. 40] It is further stipulated that an official communication from the United States Veterans Bureau, of Washington, D. C. under date of November 20th, 1925, to Guy Patten, Patten & Rye, Farmers State Bank Bldg., Vinita, Oklahoma, is as follows:

United States Veterans Bureau, Washington

November 30, 1925.

In reply refer to DAF-N Jackson, Lee Ray, C-451 941 I-221, 301.

Mr. Guy Patten, Patten & Rye, Farmers State Bank Bldg., Vinita, Oklahoma.

DEAR SIR: In reply to your letter of November 17, 1925, you are advised that the check in the amount of $455.04 received by the administrator of Lee Ray Jackson's estate represents the accrued insurance due to the date of death. The balance due under the policy of Mr. Jackson amounting to $8,925.00 has also been authorized for payment to the administrator to be distributed to the heirs in accordance with the laws of the State.

The amount of these two checks represents the total due under the insurance policy of Mr. Jackson.

For the Director: Harold W. Breining, Harold W. [fol. 41] Breining, Assistant Director.

It is further stipulated that an official communication from the United States Veterans Bureau, of Washington, D. C., under date of November 20th, 1925, to W. H. Kornegay, Attorney at Law, Vinita, Oklahoma, is as follows:

United States Veterans Bureau, Washington

In reply refer to FABB Jackson, Lee R. (deceased), C-451 941.

November 30, 1925.

W. H. Kornegay, Attorney-at-law, Vinita, Oklahoma.

DEAR SIR: Receipt is acknowledged of your letter of recent date requesting the name of the beneficiary of insurance granted the above named deceased veteran, and a certified copy of the Application for Insurance, or other evidence of the insurance.

You are advised that this Bureau does not issue policies of insurance but merely forwards to the beneficiary a form advising them of the fact that insurance has been granted for which they are the designated beneficiary. However, this form does not give the beneficiary any vested right in the insurance, in as much as the insured has the right to [fol. 42] change the beneficiary at any time prior to death. In the instant case Lee Ray Jackson was granted $10,000 Term Insurance, designating as beneficiary thereof, his wife, Mary Lucinda Jackson, under date of September 5, 1918; this insurance being payable to the insured in case of Permanent and Total disability, and to the designated beneficiary in case of death, in 240 monthly installments of $57.50 each.

The insured allowed this insurance to lapse for non-payment of premiums due May 2, 1919. However, under recent amendatory legislation it was found that a portion of this insurance was revived, that is, $9872.74 was revived, which amount was payable to the insured during his permanent and total disability and to the designated beneficiary in case of death, in 240 monthly installments of $56.88 each.

As the above captioned was rated as Permanently and Totally disabled from July 31, 1920 to date of death, his estate was entitled to receive installments of this insurance from July 31, 1920, through March 30, 1921, the anniversary date following the insured's death. The estate of the designated beneficiary who died March 6, 1923, was entitled to receive the installments of insurance from March 31, 1921, through March 30, 1923, the annuversary date following her death.

You are advised that the designated beneficiary of Government Term Insurance has only a life interest in the installments payable thereunder, and upon the death of the [fol. 43] designated beneficiary, where no alternate is named by the insured, the unpaid portion reverts to the estate of the deceased insured.

Prior to the passage of the Act of Congress, March 4, 1925, this Bureau redistributed the insurance upon the death of the designated beneficiary to the next of kin of the deceased insured in accordance with the intestacy laws of the State of the Insured's last legal residence; payments being made in monthly installments. Since the passage of the Act referred to above, this Bureau must pay the unpaid

portion of insurance after the death of the beneficiary to the Administrator of the deceased Veteran's estate in a lump sum, who should distribute same in accordance with the intestacy laws of the State of the insured's last legal residence.

The records in this case show that an award was approved in favor of Tom Ward, Administrator of the Estate of Mrs. Mary Lucinda Jackson Singleton under date of August 18, 1925, authorizing payment of insurance in the amount of $56.88 per month from March 31, 1921 through March 30, 1923. The records further show that an award was approved in favor of Mr. Guy Patten, Administrator of the estate of Lee Ray Jackson, authorizing payments of $56.88 per month from July 31, 1920 through March 30, 1921, and further authorizing a lump sum payment of $8,925.00 which amount represents the unpaid portion of insurance in this case, after the death of the beneficiary. You will note from the above that the insurance in this case has now been fully adjudicated by this Bureau.

All further communications relative to the above case should bear the C. number, C-451 941.

[fol. 44] For the Director: Charles E. Mulhearn, Charles E. Mulhearn, Assistant Director.

[File endorsement omitted.]

IN COUNTY COURT OF CRAIG COUNTY

No. 3233, Probate

[fol. 45] In the Matter of the Estate of Lee Ray Jackson, Deceased, GUY PATTEN, Administrator

JOURNAL ENTRY OF JUDGMENT—Filed Mar. 2, 1926

Now on this the 27th day of February, 1926, comes on for final hearing the above entitled matter, which was heretofore duly presented to and heard before this court on the 18th day of January, 1926, and continued for judgment until this day.

The administrator is present by his attorney William T. Rye, and the said Edith Cheek, nee Jackson, Jewell Braziel, nee Jackson, and Emmett Jackson present by their attor-

ney William T. Rye, and the claimants to the funds, George Davis, Maggie Davis and Charley Singleton, herein represented by W. H. Kornegay, Esquire, present, and argued the case both January 18th and February 27th, and the court having been fully advised in the premises, both as to the law and the facts, finds the facts to be as set forth in the stipulation of agreed statement of facts by and between the attorneys for the respective parties; finds that the insured soldier, Lee Ray Jackson, had no vested interest in any amount of the said War Risk Insurance which had not accrued to him under the award of the War Risk Insurance Bureau, at the time of his death; finds that there had accrued to said insured by reason of his permanent disability the sum of $56.88 per month from July 31, 1920 to March 30, 1921, the total sum of $455.04, which said sum was vested assets of the estate of the said Lee Ray Jackson at [fol. 46] the time of his death and same was and is distributable to his then heir, Mary Lucinda Jackson, his surviving wife and James Leroy Jackson, his only surviving child, in equal shares; that said child having died on the — day of March, 1922, intestate, unmarried and without issue his portion of said fund and estate vested on said date in the said mother Mary Lucinda Jackson; that upon the death of the said Mary Lucinda Jackson, she having remarried and being Mary Lucinda Singleton, the whole of said fund in the aggregate sum of $455.04, vested in the heir of the said Mary Lucinda Singleton, née Jackson, to-wit, one half to the surviving husband, Charles Singleton, and the remaining one-half in equal shares to the father and mother of said Mary Lucinda Singleton, George Davis and Maggie Davis.

The court further finds that said insured soldier had no vested title at the time of his death in any unaccrued installments of said War Risk Insurance, nor did the named beneficiary, named by the insured, take any vested interest in said insurance, other than to the installments which accrued during the lifetime of the beneficiary and further unaccrued installments would not pass by the law of descent and distribution to the heirs of the beneficiary; finds that permitted beneficiaries to whom an award had not been made had no vested interest in the unaccrued installments.

The court further finds that the insured and the named beneficiary in this case died prior to the passage of the act of Congress of March 4, 1925, and no other award had [fol. 47] been made prior to such time, to any permitted beneficiary; finds that from the date of the death of the named beneficiary until the passage of said Act of March 4, 1925, no person had any vested right in the unaccrued installments of said insurance money; finds that by the passage of the Act of March 4, 1925, the unaccrued balance of said insurance money was made payable in a commuted sum to the estate of the insured soldier and by said act became vested in the heirs of said estate, next surviving within the permitted class of beneficiaries designated by the Act.

The court finds that the commuted value of said installments of insurance from the date of the last payment made under any existing award in the sum of $8,925.00; finds that the claimants Edith Cheek, née Jackson, and Jewell Braziel, née Jackson, and Emmett Jackson, are the heirs of said insured soldier within the permitted class of beneficiaries of said insurance; that they are two sisters and one brother of the deceased soldier and are entitled to share equally in the distribution of said sum of $8,925.00.

It is therefore adjudged and ordered that the administrator herein be and he is hereby directed and ordered after paying the expenses and costs of administration out of the respective funds proportionately, he distribute and pay the remainder of the said $455.04 to the persons herein found to be entitled thereto and the remainder of the said $8,925.00 to the persons herein found to be entitled thereto, said distribution to be made as herein ordered after thirty days from this date.

[fol. 48] The claimants George Davis and Maggie Davis, and Charley Singleton through their attorney W. H. Kornegay, Esquire, except to that part of this judgment awarding the $8,925.00 to the brother and sisters of Lee Ray Jackson, Deceased, and gives notice of intention to appeal. The appeal bond to be given by the said Davis and wife in case of appeal is hereby fixed at $500.00.

To that part of this judgment awarding the $455.04 to the heirs of Mary Lucinda Jackson, the said Administrator Guy Patten and the brother and sisters of Lee Ray Jackson, except and give notice of intention to appeal from

this part of the judgment. No appeal bond being required as to this item because the administrator Guy Patten is already under bond and entitled to appeal without giving any further bond.

G. P. Fogle, County Judge. (Seal.)

[File endorsement omitted.]

[fol. 49] IN COUNTY COURT OF CRAIG COUNTY

[Title omitted]

NOTICE OF APPEAL—Filed Mar. 4, 1926

To the Judge of the County Court of Craig County, and Guy Patton, administrator of the estate of Lee Ray Jackson, deceased; Edith Cheek, née Jackson; Jewell Braziel, née Jackson, and Emmett Jackson and W. M. Tyner, his guardian; to George Davis, Maggie Davis and Charley Singleton, and all persons claiming an interest in the estate of Lee Ray Jackson, deceased:

You and each of you are notified that George Davis and Maggie Davis and Charley Singleton known as Charles [fol. 50] each appeal on both question of law and fact from the Decision and Judgment of the County Court of Craig County made and entered on the 27th day of February 1926, in the above entitled cause, which judgement awarded to Edith S. Cheek and to Mary Jewell Braziel and to Emmett Jackson a portion of the funds in the hands of Guy Patton, administrator de bonis non of the estate of Lee Ray Jackson, Deceased, and directing said administrator to pay to each of said parties a portion of said fund aggregating $8,925.00, and refusing to award to George Davis one fourth of said fund, to Maggie Davis one fourth of said fund and to Charley Singleton one half of said fund. That said appeal is made to the District Court of Craig County, Oklahoma. An appeal bond in the sum of five hundred dollars as ordered by the court is herewith tendered and offered for filing. The county judge is requested to approve said bond, and to cause a certified copy of this notice and the appeal bond and of the judgment and decree and order appealed from and of the minutes records papers and pro-

ceedings in the case to be transmitted within ten days to the clerk of the District Court of Craig County to be filed in his office.

George Davis, Maggie Davis, Charley Singleton, by W. H. Kornegay, Atty.

The above notice and bond filed and approved on March 3, 1926.

G. P. Fogle, County Judge. (Seal.)

[fol. 51] [File endorsement omitted.]

[fol. 52] Bond on appeal of Maggie Davis, approved and filed March 4, 1926, omitted in printing.

[fols. 53 & 54] Bond on appeal of George Davis, approved and filed March 4, 1926, omitted in printing.

[fols. 55 & 56] Bond on appeal of Charley Singleton, approved and filed March 4, 1926, omitted in printing.

[fol. 57] IN COUNTY COURT OF CRAIG COUNTY

[Title omitted]

NOTICE OF APPEAL—Filed Mar. 8, 1926

State of Oklahoma to Honorable G. P. Fogle, as County [fol. 58] Judge of Craig County, Oklahoma, and to the heirs and claimants and all persons interested in the estate of Lee Ray Jackson, Deceased:

Guy Patten, as Administrator of the Estate of Lee Ray Jackson, Deceased, hereby gives notice of an appeal from the order and judgment made, entered and rendered in this matter by the County Court of Craig County, Oklahoma, on the 27th day of February, 1926, finding, adjudging and awarding $455.04 of the insurance money in this estate to

Maggie Davis, George Davis and Charley Singleton, and this appeal is taken on a question of law, there being no dispute as to the facts in the case, they having been stipulated and agreed upon, the appellant feels that the law has been misconstrued by giving any of said money to the said Davis and Wife and Charley Singleton, for the reason that they are of no kin to the deceased soldier Lee Ray Jackson, and for the reason that they are none of them within the permitted class of beneficiary who could inherit or receive any of the money from the war risk insurance policy on the life of Lee Ray Jackson, Deceased.

Dated this 8th day of March, 1926.

Guy Patten, as Administrator of the Estate of Lee Ray Jackson, Deceased.

[fol. 59] [File endorsement omitted.]

IN COUNTY COURT OF CRAIG COUNTY

[Title omitted]

[fol. 60] NOTICE OF APPEAL—Filed Mar. 8, 1926

State of Oklahoma to Honorable G. P. Fogle, as County Judge of Craig County, Oklahoma, and to all the heirs and claimants and all persons interested in the estate of Lee Ray Jackson, deceased:

Edith Cheek, Jewell Braziel and Emmett Jackson, hereby gives notice of an appeal from the order and judgment made, entered and rendered in this matter by the County Court of Craig County, Oklahoma, on the 27th day of February, 1926, finding, adjudging and awarding $455.04 of the insurance money in this estate to Maggie Davis, George Davis and Charley Singleton, and this appeal is taken on a question of law, there being no dispute as to the facts in the case, they having been stipulated and agreed upon, the appellants feel that the law has been misconstrues by giving any of said money to the said Davis and wife and Charley Singleton for the reason that they are of no kin to the deceased soldier Lee Ray Jackson, and for the reason that they are none of them within the permitted class of beneficiaries who could inherit or receive any of

the money from the war risk insurance policy on the life of Lee Ray Jackson, Deceased.

Dated this 8 day of March, 1926.

[fol. 61] Edith Cheek, Jewell Braziel, Emmett Jackson, by W. T. Tynon, Guardian of Emmett Jackson.

[File endorsement omitted.]

IN COUNTY COURT OF CRAIG COUNTY

[Title omitted]

[fol. 62] ORDER ACCEPTING NOTICE OF APPEAL, APPROVING APPEAL, AND DIRECTING CASE TO BE TRANSMITTED TO DISTRICT COURT—Filed Mar. 8, 1926.

Now on this 8th day of March, 1926, Edith Cheek, Jewell Braziel, and Emmett Jackson in their own proper persons, and Guy Patten in his capacity as Administrator of the Estate of Lee Ray Jackson, Deceased, having filed in this court notice of appeal from that part of the judgment of this court made and entered on the 27th day of February, 1926, awarding $455.04 of the war risk insurance money to Maggie Davis, George Davis and Charles Singleton, and the said Edith Cheek, Jewell Braziel, and Emmett Jackson having filed in this court this day their appeal bond, and the said Guy Patten as Administrator of the estate not being required to give an appeal bond, and his administrator's bond standing under Section 1429 of Compiled Laws of Oklahoma, 1921, the court having examined all these papers, finds that this appeal has now been perfected by the giving of proper and timely notice and the filing of all necessary bonds and others papers,

It is therefore ordered, adjudged and decreed by the Court that this appeal is now perfect and that the clerk of this court is directed to transmit said appeal to the District Court of Craig County, Oklahoma, there to be tried in the [fol. 63] manner and form as provided by law, and that the notice of appeal as to matter of form and time of giving and the bond and each term and condition thereof is by the court approved.

G. P. Fogle, County Judge. (Seal.)

[File endorsement omitted.]

IN COUNTY COURT OF CRAIG COUNTY

In the Matter of the Estate of Lee Ray Jackson, Deceased

ADMINISTRATOR'S OR EXECUTOR'S BOND—Filed Sept. 21, 1925

Know all men by these presents that we, Guy Patten, as [fol. 64] principal, and the United States Fidelity and Guaranty Company of Maryland, as sureties, are held and firmly bound unto the State of Oklahoma, in the penal sum of ($10,000.00) ten thousand dollars lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, by these presents.

The Condition of the above Obligation is such, that whereas, by order of the County Court of Craig County, State of Oklahoma, made and entered on the 21st day of September A. D., 1925 the above named principal was appointed administrator de bonis non of the estate of Lee Ray Jackson Deceased, and letters of administration were directed to issue to said principal, upon his taking and subscribing the oath required by law, and executing a bond to the State of Oklahoma, in the penal sum of ten thousand dollars with two or more sureties to be approved by the Judge of said Court:

Now, if the above burden principal shall faithfully execute the duties of such trust as such administrator de bonis non according to law, then this obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, we have hereunto subscribed our names, this 21st day of September A. D., 1925.

Guy Patten, Principal. United States Fidelity & [fol. 65] Guaranty Co., by Ruth Morrison, Its Attorney-in-fact. (Seal.)

I hereby approve the above bond this 21st day of September, 1925.

G. P. Fogle, County Judge. (Seal.)

[File endorsement omitted.]

[fols. 66 & 67] Judge's certificate to foregoing omitted in printing.

Clerk's certificate to foregoing omitted in printing.

[fol. 68] IN DISTRICT COURT OF CRAIG COUNTY

MINUTE ENTRIES.

Court Clerk's Minutes

March 26th, 1926.

Now, on this 26th day of March, 1926, the same being one of the regular days of the November, 1925 term of the District Court within and for Craig County, Oklahoma, said Court now in session, pursuant to adjournment, with the following officers present:

Hon. A. C. Brewster, Judge;
Paul O. Simms, Clerk;
J. H. Cerny, Reporter,

the following had and done, to-wit:

In re Estate of Lee Ray Jackson, Dec'd

4742

Both sides appear by attorneys. Case presented and Court takes case under advisement April 30, 1926. Court stands adjourned until April 30th, 1926, and subject to call.

[fol. 69] IN DISTRICT COURT OF CRAIG COUNTY

No. 4742

In re the Matter of the Estate of Lee Ray Jackson, Deceased, GUY PATTEN, Administrator

Be it remembered that on March 26, 1926, this cause came on regularly for trial in the District Court on appeal from the County Court, pursuant to regular setting; Charley Singleton, Maggie Davis and George Davis, claimants, or plaintiffs in error, appearing by their attorney of record, W. H. Kornegay; and Edith Cheek nee Jackson,

Jewel Braziel nee Jackson, and Emmett Jackson, a minor, claimants, or defendants in error, appearing by their attorney of record, William T. Rye, and Guy Patten, Administrator, appearing by William T. Rye, attorney. A jury was waived. Both sides announced ready for trial, and thereupon the cause was tried to the Court upon the Agreed Statement of Facts hereinbefore set out, the following proceedings being had, to-wit:

Mr. Rye: Your Honor, this case originated in the County Court. After a hearing had there, Mr. Kornegay appealed from one part of the judgment, and the administrator appealed from another part. Of course the heirs whom I represent joined in that appeal. My understanding is that when it comes up here it is tried de novo. And since we are the [fol. 70] persons who made the application for the distribution in the County Court, and Mr. Kornegay also made application for distribution to his clients, I don't know whether it would be right and proper for me to open or for Mr. Kornegay to open the case.

Mr. Kornegay: It doesn't make any difference. It is all the same, anyhow. Go ahead.

Mr. Rye: All right. That being the case, your Honor, I will read you the testimony. The testimony in this case is a stipulation as to what the facts are.

Mr. Kornegay: The record that the County Judge has in his own office, which of course was not certified up here, shows that the estate of Mary Singleton was administered on by Tom Ward, and that all the debts were paid, and that my clients were found to be her heirs.

Mr. Rye: I think there would be no objection to that.

Mr. Kornegay: Let the record show that this is stipulated in addition to the original typewritten stipulation in this case.

IN DISTRICT COURT OF CRAIG COUNTY

ADDITIONAL STIPULATION OF FACTS

Mr. Kornegay: It is stipulated and agreed that the estate of Mary Singleton, formerly Mary Jackson, the widow of the deceased Lee Ray Jackson, has been administered in the County Court of Craig County, Oklahoma,

and that there are no debts against the said estate, and [fol. 71] that an order of final distribution has been entered in that case, finding that Charles Singleton was her husband at the time of her death and was entitled to one-half of her property, and finding that her father and mother, George Davis and Maggie Davis, were entitled to the other part, and ordering her property distributed accordingly.

Mr. Rye: That is all right, Mr. Kornegay.

(Thereupon the stipulation or agreed statement of facts hereinbefore set out in this case-made was read and presented to the Court by Mr. Rye. Thereupon the cause was argued to the Court by counsel on both sides, and at the conclusion of all the arguments Mr. Kornegay on behalf of his clients submitted his request for findings asking the Court to make findings according to the same; and thereupon the Court took the cause under advisement until a later date.)

[fol. 72] IN DISTRICT COURT OF CRAIG COUNTY

[Title omitted]

REQUEST FOR FINDINGS—Filed Mar. 26, 1926

Maggie Davis, George Davis and Chas. Singleton ask the following findings:

I

The decree of the Probate Court of October 9, 1922, made by the former Judge of the Court, finding Mary Singleton to be entitled to all the property of the deceased Lee R. Jackson is binding in this proceeding.

II

The said Maggie Davis, George Davis and Charles Single-
[fol. 73] ton are entitled to all the fund after paying the expenses of the administration.

W. H. Kornegay, Attorney.

[File endorsement omitted.]

[fol. 74] IN DISTRICT COURT OF CRAIG COUNTY

MINUTE ENTRY OF JUDGMENT, ETC.—May 3, 1926

Now on this 3rd day of May, 1926, the same being the first day of the May 1926 term of the District Court within and for Craig County, Oklahoma, said Court now in session.

The following officers present:

Hon. A. C. Brewster, Judge.

Clay M. Roper, County Attorney.

Harry J. Campbell, Sheriff.

J. H. Cerny, Reporter.

Paul O. Simms, Clerk.

The following had and done, to-wit:

In re Estate Lee Ray Jackson, Dec'd

4742

Court having previously taken case under advisement now finds as follows:

1. Court finds, upon request of Maggie Davis et al., that decree of Probate Court of 1922 is not binding in this proceeding. Appellants except.

[fol. 75] 2. Court finds that Maggie Davis, George Davis, and Charley Singleton are not entitled to any of the money in this case. Appellants except.

Court finds in favor of Edith Cheek, née Jackson, Jewell Braziel née Jackson, and Emmett Jackson, a minor. All as per J. E. Appellants except.

Motion for new trial presented, heard and overruled. Appellants except.

Appellants in open Court, in presence of the Court, Court Clerk and attorney for appellees, gives notice of intention to appeal to the Supreme Court of the State of Oklahoma and asks for 90 days to prepare and serve case-made. For good cause shown an extension of 90 days granted to prepare and serve case-made, 10 days to suggest amendments, to be settled in 5 days. Judgment stayed 30 days, amount of supersedeas bond to be set May 28, 1926.

[fol. 76] IN DISTRICT COURT OF CRAIG COUNTY

[Title omitted]

MOTION FOR A NEW TRIAL—Filed May 3, 1926

Maggie Davis, George Davis and Charley Singleton move the Court for a new Trial on the following grounds.

I

The decision and findings are not sustained by sufficient evidence and are contrary to the law.

II

Errors of law occurred in the trial duly excepted to by the Petitioners, and to their prejudice.

III

The Court erred in holding that the decision of the Probate Court as to the heirs of Lee Ray Jackson is not binding on this Court.

IV

The Court erred in overruling the requests for findings made by petitioner.

W. H. Kornegay, Atty.

[fols. 77 & 78] [File endorsement omitted.]

[fol. 79] IN DISTRICT COURT OF CRAIG COUNTY

No. 4742, Civil

In the Matter of the Estate of Lee Ray Jackson, Deceased

JOURNAL ENTRY OF JUDGMENT—Filed May 15, 1926

On March 26th, 1926, in open court the above entitled matter came on for hearing upon the agreed statement of facts of the parties, the administrator appearing in person

and by W. T. Rye, his attorney, and claimants Edith Cheek, Jewell Braziel and Emmett Jackson appearing by W. T. Rye, their attorney, and claimants Charley Singleton, George Davis and Maggie Davis, appearing by W. H. Kornegay, their attorney, and the Court having heard and considered the argument of counsel and the authorities submitted, and having the same under advisement until this day;

Now, on this the 3rd day of May, 1926, this matter coming on for further consideration and for delivery of opinion by the Court, the Court finds that Edith Cheek, nee Jackson, and Jewell Braziel, nee Jackson, and Emmett Jackson, a minor, are the sisters and brother of Lee Ray Jackson, deceased, and are entitled to all of the War Risk Insurance money now in the hands of Guy Patten, Esquire, as Administrator of the estate of Lee Ray Jackson, Deceased, and that neither Charley Singleton, nor Maggie Davis, nor George Davis, have any right, title, interest or estate in and to any of said money; to which Charley Singleton, George Davis and Maggie Davis except; and

The Court finds further that the journal entry of judgment in the case of the administration of the estate of Lee Ray Jackson, Deceased, heretofore rendered on the 9th day [fol. 80] of October 1922, is not conclusive nor binding as to this case, to which said Charley Singleton, George Davis and Maggie Davis except; and thereupon Charley Singleton, George Davis and Maggie Davis file a Motion for New Trial, which is by the Court considered and overruled, and to which the said Charley Singleton, George Davis and Maggie Davis except.

It is therefore considered, ordered, adjudged and decreed by the Court that Edith Cheek, nee Jackson, Jewell Braziel, nee Jackson, and Emmett Jackson, a minor, be and they are hereby declared to be the sole and only heirs entitled to the War Risk Insurance money in the hands of Guy Patten, as administrator de Bonis Non of the Estate of Lee Ray Jackson, Deceased, and that they are entitled to all of said War Risk Insurance proceeds, to wit, $455.05 that accrued prior to the death of Lee Ray Jackson, and $8,925.00 the commuted value of the insurance installments subsequent to the death of Mary Lucinda Jackson Singleton, the beneficiary, and that each, Edith Cheek, Jewell Braziel, and Emmett Jackson, share equally therein,

each taking a one-third, after the payment of the expenses of this administration.

It is further ordered, adjudged and decreed by the Court, That the County Court of Craig County, Oklahoma, distribute the insurance money derived from the insurance policy of Lee Ray Jackson, Deceased, to the above named brother and sisters of said deceased, in accordance with the judgment above rendered, and to the rendition of said judgment Charley Singleton, George Davis and Maggie Davis except and give notice of their intention to appeal to the [fol. 81] Supreme Court of the State of Oklahoma, which notice is entered on the trial docket; and for good cause shown the said appellants are allowed ninety days to make and serve case-made, and the appellees are given ten days thereafter to suggest amendments.

Judgment is stayed for thirty days, and the amount of supersedeas bond is to be fixed by the Court.

A. C. Brewster, Judge of the District Court.

[File endorsement omitted.]

[fol. 82] Reporter's certificate to foregoing case-made omitted in printing.

[fol. 83] Clerk's certificate to foregoing case-made omitted in printing.

[fol. 84] In the District Court of Craig County

[Title omitted]

Attorney's certificate to foregoing case-made omitted in printing.

[fol. 85] In District Court of Craig County

[Title omitted]

Tender of Case-made

To the above-named defendants-in-error and their attorney of record, Wm. T. Rye:

The above and foregoing case-made is hereby tendered to, and served upon, you as a true and correct case-made in

the above entitled cause, and as a true and correct statement and complete record and transcript of all pleadings, motions, testimony and evidence, orders, findings, judgments and proceedings in the above entitled cause, on this, the 26th day of June, 1926.

W. H. Kornegay, Attorney for Appellants or Plaintiffs-in-Error.

[fol. 86] In District Court of Craig County

[Title omitted]

Acceptance of Service of Case-made

I, the undersigned, attorney of record for the appellees or defendants-in-error above named, hereby and by these presents accept and acknowledge service of the above and foregoing case-made upon me, this 26th day of June, 1926.

William T. Rye, Attorney for Appellees, Defendants-in-Error Above Named.

[fol. 87] In District Court of Craig County

[Title omitted]

Stipulation of Attorneys

We, the undersigned, W. H. Kornegay, attorney of record for the above named Plaintiffs-in-Error, and William T. Rye, attorney of record for the above named Defendants-in-Error, do hereby stipulate and agree that the foregoing case-made contains a full, true, complete and correct copy and transcript of all the proceedings in this cause, all the testimony and evidence offered and introduced, all the orders and rulings made by the Court, and the exceptions thereto allowed and taken by either party, and all the record upon which said judgment in this cause was rendered, and the same is a full, true, complete and correct case-made; and the appellees or defendants-in-error waive the right to suggest amendments to said case-made, and hereby consent that the same may be settled immediately and without notice, and hereby join in the request that the Judge of the above named Court settle the same and order this case-made certified to the Clerk of the Supreme Court of the

State of Oklahoma, and said appellees or defendants-in-error waive the issuance and service of summons in error from the Supreme Court of the State of Oklahoma.

Witness our hands on this, the 29 day of July, 1926.

W. H. Kornegay, Attorney for Appellants, or Plaintiffs-in-Error. William T. Rye, Attorney for Appellee or Defendants-in-Error.

[File endorsement omitted.]

[fol. 88] In District Court of Craig County

[Title omitted]

Notice of Settlement of Case-made

To the attorney for said appellees or defendants-in-error:

You are hereby notified that on the 30th day of June, A. D. 1926, at 9 o'clock A. M., or as soon thereafter on said day as counsel can be heard, the case-made in the above entitled cause with any amendments heretofore suggested by you will be presented to the Honorable A. C. Brewster, Judge of the District Court within and for Craig County, Oklahoma, who presided at the trial of this cause, at his chambers in the city of Vinita, Oklahoma, for settlement.

Dated this 30th day of June, A. D. 1926.

—— ——, Counsel for Appellants, Plaintiffs-in-Error.

Service of the above Notice is hereby accepted this — day of June, A. D. 1926.

—— ——, Counsel for Appellees, Defendants-in-Error.

[fol. 89] In District Court of Craig County

[Title omitted]

Certificate of Trial Judge

Be it remembered that on this, the 30th day of July, A. D. 1926, at 9 o'clock, A. M., at the courthouse in the city of

Vinita, County of Craig, Oklahoma, and within the Twenty-Third Judicial District of the State of Oklahoma, the above and foregoing case-made was presented to me, A. C. Brewster, Judge of the Twenty-Third Judicial District of the State of Oklahoma, and of the District Court of Craig County, who presided over the trial of the above entitled cause, to be settled and signed as the original Case-made herein, as the law requires, by the parties to this action; and it appearing to me that said Case-made has been duly made and served upon the appellees or defendants in error above named within the time fixed by the order of this Court and in the manner and form provided by law; that the appellants or plaintiffs in error are present by their attorney of record, W. H. Kornegay; that the appellees or defendants in error are present by their attorney of record, William T. Rye; said appellees or defendants in error having presented their amendments to said case-made, and said case-made having been examined by me, as corrected, is found to be a true and correct statement and complete transcript and contains all the pleadings, evidence, demurrers, motions, orders, findings, exceptions, judgment, and all other proceedings had in said cause upon which judgment was rendered; and I hereby allow, certify, settle and sign the same as a true and correct Case-made in this cause, and hereby order that the Clerk of this Court attest the same with his name and the seal of this Court, and file the same of record as required by law.

Witness my hand the date last above written.

A. C. Brewster, District Judge.

Attest:

Paul O. Simms, Court Clerk Within and for Craig County, Oklahoma. (Seal.)

[fol. 90] [File endorsement omitted.]

[fol. 91] IN SUPREME COURT OF OKLAHOMA

17748

CHARLEY SINGLETON et al., Plaintiffs in Error,

vs.

EDITH CHEEK, etc., et al., Defendants in Error

JOURNAL ENTRY

And now on this January 30th, 1928, the above cause is argued orally before Supreme Court Commission, Division No. 1, and submitted, on the record, briefs and oral argument.

[fol. 92] IN SUPREME COURT OF OKLAHOMA

17748

CHARLEY SINGLETON et al., Plaintiffs in Error,

vs.

EDITH CHEEK, etc., et al., Defendants in Error

JUDGMENT—Mar. 13, 1928

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be reversed and the cause remanded.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby reversed and the cause remanded with directions to proceed consistent with the opinion filed therein.

Opinion by Reid, C.

[fol. 93] Order of March 26, 1929, granting rehearing vacated. Opinion refiled Dec. 17, 1929.

Jessie E. Moore, Clerk.

[File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

No. 17748

In re Jackson Estate

CHARLEY SINGLETON, MAGGIE DAVIS, and GEORGE DAVIS, Plaintiffs in Error,

vs.

EDITH CHEEK, née Jackson; JEWEL BRAZIEL, née Jackson; Emmett Jackson, by W. M. Tyner, Guardian, and Guy Patton, Administrator, Defendants in Error

Syllabus

1. The heirs of a decedent under the law of descent and distribution are to be determined as of time of decedent's death.

2. Monthly installments due a soldier for permanent and total disability under War Risk Insurance, constitute vested assets of the soldier at the time of his death, and the funds, no matter when paid by the government to his administrator must be distributed to the heirs of the soldier as of the date of his death.

3. Under War Veterans' Act, Section 303, as amended by Act Congress March 4, 1925, Section 14 (U. S. Comp. St. Sec. 9127½-303), in a case where both the insured soldier and the designated beneficiary died, installments becoming due upon the insurance after the death of the beneficiary, which were commuted and paid by the government to an administrator de bonis non of the estate of the insured, become ordinary assets of said estate as of the date of the death of the insured and must be distributed to his heirs accordingly.

Appeal from District Court of Craig County, Oklahoma

Hon. A. C. Brewster, Judge

Action to Determine the Proper Distribution of War Risk Insurance Collected by Administrator de Bonis Non of the Estate of Lee Ray Jackson, Deceased Soldier

W. H. Kornegay, attorney for plaintiffs in error.
William T. Rye, attorney for defendants in error.

[fol. 94] OPINION—Filed Mar. 13, 1928

Opinion, REID, C.:

This is a contest to determine who shall have the proceeds of a $10,000.00 policy of war risk insurance issued to Lee Ray Jackson, a soldier in the late war.

The agreed facts in the case show that on September 5, 1918, the soldier was granted this insurance, designating his wife Mary Lucindia Jackson, the beneficiary; the insurance being payable to the insured in case of permanent total disability and to the designated beneficiary in case of death in two hundred and forty installments of $57.50 each. By reason of non-payment of premium a part of the insurance lapsed, but by Act of Congress, $9,872.74, was revived.

The insured was rated by the Bureau of War Risk Insurance, as permanently and totally disabled, during his lifetime, from July 21, 1920, until the date of his death, March 23, 1921; accumulating to him thereby the sum of $455.04, which amount had not been paid to him at the time he died.

He left his wife and an infant, James Leroy Jackson, and on May 5, 1921, his wife was appointed administratrix of his estate by the County Court of Craig County. The infant died in March, 1922, and upon a final settlement of the estate of the insured, the court determined his heirs to be his wife and child as above stated, and found that the child had died since the death of his father, leaving his mother as his heir, and thereupon decreed, Mary Lucindia [fol. 95] Jackson, to be the owner of the entire estate of the said Lee Ray Jackson, the insured.

The wife of the insured died on March 26, 1923, and from the death of the insured until that date the monthly pay-

ments, accumulated to her as the beneficiary amounted to the sum of $1365.12. She had married again and was the wife of Charley Singleton, at the time of her death. Administration was also had on her estate and the amount accumulated to her under the policy was paid to her administrator, and is not involved in this proceeding for the reason that upon closing her estate a determination of her heirs was made by the County Court and it was therein found that Charley Singleton her husband inherited a one-half interest and that her mother and father Mattie Davis and George Davis, respectively inherited the other one-half interest equally, and her estate, including this accrued insurance, was distributed and paid to her heirs, accordingly.

After the death of the wife of the insured, the original administration on his estate having been closed, one George Patton, was appointed administrator de bonis non by the county court of Craig County, and with the consent of the Bureau of War Risk Insurance, the remaining installments due on the insurance after the death of his wife, were commuted, and the value thereof fixed at the sum of $8925.00. This amount, together with the accrued and unpaid amount due the soldier during his lifetime, on account of his disability amounting to $455.05, was paid to the administrator de bonis non and the question now to be decided in this case is, who is the owner of this money.

[fol. 96] The question arose in the county court in the administration de bonis non of the estate of Lee Ray Jackson, the soldier, and this case is a continuation of that proceeding.

When the insured died, other than his wife and child, he left two sisters, Edith Cheek and Mary Jewel Brazel, and a brother Emmett Jackson; his father and mother having pre-deceased him.

The county court in this proceeding determined, upon hearing the petition for determination of heirship and distribution of this insurance money, that the sum of $455.04 became vested assets of Lee Ray Jackson at the time of his death and was properly distributed to Mary Lucindia Jackson, in the final distribution of his estate as heretofore set out, and that upon the death of Mary Lucindia Singleton nee Jackson, this not being paid in her lifetime vested in her heirs, one-half to her husband Charley Singleton, and

the remaining one-half in equal shares to her father and mother George Davis and Mattie Davis, and assigned this amount accordingly, but held that the commuted amount of $8925.00, accruing after the death of the beneficiary, became vested in the sisters and brother of the insured, to-wit: Edith Cheek, Jewel Brazel and Emmett Jackson, and assigned this to them in equal shares.

The parties representing the respective sides of the litigation then appealed to the district court of Craig County. Upon the trial in that court it was held that the sisters and brother of the insured inherited both sums of the money in controversy and that the decree of heirship made and entered in the original administration of the insured's estate on the 9th day of October, 1922, was not binding as to the distribution of those funds.

[fol. 97] From the foregoing findings and judgment of the district court, Charley Singleton, husband of Mary Lucindia Singleton nee Jackson, and George Davis and Mattie Davis, her father and mother, appeal to this court.

The parties bringing this appeal will be referred to as the appellants, and the adverse parties as the appellees.

By Act of Congress approved September 2, 1914, there was established in the Treasury Department of the United States government a bureau known as the Bureau of War Risk Insurance, for the purpose of insuring United States vessels and their cargoes against loss and damage by the risks of war, and by an Act approved October 6, 1917, the former Act was amended to permit persons engaged in the military service of the government to obtain from it insurance against death or total disability. By section 402 of the amended Act it was provided that the insurance should be payable only to a spouse, child, grandchild, parent, brother or sister, and also during total permanent disability to the injured soldier, in two hundred and forty equal monthly installments. And said section contains the further provision:

"If no beneficiary within the permitted class be designated by the insured, either in his lifetime or by his last will and testament, or if the designated beneficiary does not survive the insured, the insurance shall be payable to such person or persons, within the permitted class of beneficiaries as would under the laws of the State of the resi-

dence of the insured, be entitled to his personal property in case of intestacy. If no such person survive the insured, then there shall be paid to the estate of the insured an amount equal to the reserve value, if any, of the insurance at the time of his death, calculated on the basis of the American Experience Table of Mortality and three and one-half per centum interest in full of all obligations under the contract of insurance." (U. S. Comp. St. Sec. 514 uuu).

[fol. 98] It will be observed from the foregoing that only certain designated persons could be named by the soldier as the beneficiary in the certificate. These persons are referred to in the Acts of Congress, and in decisions of the courts construing these Acts, as persons within the permitted class.

Section 402 was amended by an Act approved June 25, 1918, but the section, as amended, has no present application to this case and is not quoted.

By an Act approved December 24, 1919, the War Risk Insurance Act was amended and modified. Acts 66th Congress, Sess. 11, C. 16, p. 371. Section 15 of that act reads:

Sec. 15. "That if any person to whom such yearly renewable term insurance has been awarded dies, or his rights are otherwise terminated after the death of the insured, but before all of the two hundred and forty monthly installments have been paid, then the monthly installments payable and applicable shall be payable to such person or persons within the permitted class of beneficiaries as would, under the laws of the state of residence of the insured be entitled to his personal property in case of intestacy; and if the permitted class of beneficiaries be exhausted before all of the two hundred and forty monthly installments have been paid, then there shall be paid to the estate of the last surviving person within the permitted class the remaining unpaid monthly installments." U. S. Comp. St. Sec. 514 vv (1).

On June 7, 1924, there was approved "An Act to consolidate, codify, revise and re-enact the laws affecting the establishment of the United States Veterans' Bureau and the administration of the War Risk Insurance Act, as amended and the Vocational Rehabilitation Act, as amended."

See Acts 68th Congress, Sess. 1, c. 320 p. 607.

Section 303 of this act (U. S. Comp. St. Sec. 9127½-303) reads:

[fol. 99] "If no person within the permitted class of beneficiaries survive the insured, or if before the completion of payments the beneficiary or beneficiaries shall die and there be no surviving person within said permitted class, then there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable under the provisions of this title; Provided, That in cases where the estate of the insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate of the insured, but shall escheat to the United States and shall be credited to the United States Government life insurance fund or the military and navy insurance appropriation, as may be proper. This section shall be deemed to be in effect as of October 6, 1917."

The Act of June 7, 1924, was amended by an act approved March 4, 1925, and thereby section 303 of the Act of June 7, 1924, was amended so as to read:

"Sec. 303. If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: Provided, that all awards of yearly renewable term insurance which are in course of payment on the date of the approval of this Act shall continue until the death of the person receiving such payments, or until he forfeits same under the provisions of this Act. When any person to whom such insurance is now awarded dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance so awarded to such person: Provided further, that no award of yearly

renewable term insurance which has been made to the estate of a last surviving beneficiary shall be affected by this amendment: Provided, further, that in cases when the estate of an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation. This section shall be deemed to be in effect as of October 6, 1917, U. S. Comp. Stat. Sec. 9127½-303.

[fol. 100] The appellants claim that the sums of money in controversy are to be considered as assets of the estate of the deceased soldier, as of the date of his death, and that the heirship determined in the original administration concludes that question, and that final distribution of the funds must be made as any other assets of the estate of the insured without reference to whether the person ultimately receiving the same falls within the permitted class. On the other hand the appellees assert that the heirs of the insured so far as these funds are concerned, must be held to be those in existence at the date of the death of the beneficiary. And that only persons within the permitted class are entitled to receive any part of these funds. Supporting this contention the appellees cite the following cases:

Salzer v. United States et al. (two cases), 300 Fed. 764.

Salzer vs. United States et al. (two cases), 300 Fed. 767 (C. C. A.).

Cassarello v. United States, 271 Fed. 486.

Cassarello vs. United States, 279 Fed. 396 (C. C. A.).

Richmond [redacted] United States, 6 (2d) Fed. 143 (C. C. A.).

However it will be observed that neither of the foregoing cases considered the effect of the Act of Congress of March 4, 1925, and though they seem to sustain the contention of appellees if this suit were one between the parties as to whom the government should pay the subsequent installments if the case had arisen and been heard before said Act.

However, let us consider the case of Salzer v. United States, supra, which was decided by the United States Dis-

trict Court, whose decision was affirmed by the Circuit Court of Appeals. In that case the soldier named his wife [fol. 101] as beneficiary. He died October 16, 1918, and his wife died the next day. The insured left neither father, mother, brother, sister, grandparent nor descendant, but did leave uncles and aunts who were within the permitted class by amendments to the War Risk Insurance Act. The soldier's wife, the beneficiary, left her father, mother and sister. The father of the beneficiary died and Mrs. Salzer, as administratrix of his estate brought suit for the insurance installments becoming due up to the time of his death; and in her individual capacity, as a surviving heir, sued for the installment accruing after the death of the father of the beneficiary; she claiming that line of inheritance from the deceased beneficiary. The United States Courts denied the claim of the mother of the beneficiary and held that the proceeds of the insurance should go to the relatives of the deceased soldier. However, it appears that no award of any of these funds accruing was made by the Bureau of War Risk Insurance until after the approval of the Act of Congress March 25, 1927. And in re Ryan's Estate 222 N. Y. S. 253, we find the final echo of the Salzer case.

The soldier in the Salzer case was William T. Ryan, and an administrator was appointed for his estate. And the insurance which had accumulated under his policy amounting to $9963.00 was paid by the Bureau of War Risk Insurance to his administrator. This sum was claimed on the one hand by the Administrator of Rose M. Ryan, the deceased widow of the insured, on the ground that the widow was the sole distributee of his estate. On the other hand the uncles and aunts of the insured claimed the fund, asserting that only those within the permitted class could inherit from the soldier's estate derived from this insurance. The Surrogate held that the amount being paid by the government under the amendment of March 4, 1925, [fol. 102] to the estate of the insured, without any limitations whatsoever, became assets of said estate as of the date of the death of the insured, that the wife inherited it, and took it as an heir and not as beneficiary and that the fund should be distributed to her administrator for final distribution to her heirs. This decision of the Surrogate

Court was affirmed by the Supreme Court of New York, in 222 N. Y. S. 891. The facts in the foregoing case bear striking resemblance to those in the present case, and to us the case completely answers the contention of appellees.

And also in the matter of In re Storum's Estate, 221 N. Y. S. 771, the Supreme Court of New York also had under consideration the same question presented in the foregoing case. Storum the soldier had named his wife his beneficiary. He died first leaving surviving his widow, father and mother. His wife then died and the litigation was between the father and mother of the soldier, claiming the entire fund as the sole next of kin of the insured, at the time of the death of the beneficiary, and the mother of the soldier's widow, contended that the question as to who were the next of kin of the soldier should be determined as of the date of his death.

The installments due after the death of the beneficiary had been commuted and paid by the government, to the administrator of the deceased soldier's estate. And the question arose as to the distribution of this fund. In view of the fact that the opinion in that case discusses in great detail the question presented in the present case, and arrives at the conclusion most reasonable to us, we quote from it at length:

[fol. 103] "(1) It was conceded that a beneficiary under an ordinary life insurance policy upon the death of the assured, had a vested interest. It was held, however, that a war risk certificate was not an ordinary commercial life insurance policy, but was a right to receive the installments for the time being, subject to the power vested in Congress to amend and extend the act. The right of the beneficiary to receive the payment of installments is in the nature of both a pension and an insurance. Cassarello v. United States (D. C.) 271 F. 486, affirmed (C. C. A.) 279 F. 396; Horst v. United States (D. C.) 283 F. 600, affirmed subnom; Helmholz v. Horst (C. C. A.) 294 F. 417; United States v. Napolson (C. C. A.) 296 F. 811; Gilman Heirs v. United States (D. C.) 290 F. 614; Salzer v. United States (D. C.) 300 F. 764, affirmed (C. C. A.) 300 F. 767; Peart v. Chase (D. C.) 13 F. (2d) 908.

The case of White v. United States et al. (D. C.) 299 F. 855 was affirmed by the United States Supreme Court in 270 U. S. 175, 46 S. Ct. 274, 70 L. Ed. 530, and that court definitely decided that a beneficiary under a war risk certificate did not have a vested interest in unpaid installments but the interest of the beneficiary was subject to the authority of Congress to amend and change the act. The following cases decided since are to the same effect: Battaglia v. Battaglia (Tex. Civ. App.) 290 S. W. 296; Perrydore v. Hester (Ala. Sup) 110 So. 403; In Re Pivonka's Estate (Iowa) 211 N. W. 246, see also 3 Wisconsin Law Review 500.

After the death of the insured soldier in the case at bar, the Congress, by section 303 of the World War Veteran's Act 1924, approved June 7, 1924 (43 Stat. 625 c. 320) provided that if, before the completion of payment of all installments, the beneficiary should die, and there be no surviving person within the permitted class of beneficiaries then there should be paid to the estate of the insured the present value of monthly installments. It will be noted that the act still retained the provision relating to the permitted class of beneficiaries. That provision proved to be unworkable, and thereafter the Congress, on March 4, 1925, amended section 303, (43 Stat. 1310 c. 553) U. S. Comp. St. S. 9127½-303) by eliminating all reference to surviving persons of a permitted class, and made the unpaid installments, in case of the death of a beneficiary, payable to the estate of the insured soldier. In said amendment it was provided that the amendment should be deemed to be in effect as of October 6, 1917.

[fol. 104] (2) Under the decisions hereinbefore referred to, the beneficiary Bessie Storum, the soldier's widow, did not have a vested interest in the proceeds of the certificate. The amendments of the act were valid and effective against her and her next of kin, and her mother as her sole next of kin, is not entitled to take all of said fund under the Decedent Estate Law of this state. The fund now in the possession of the administrator, paid to him by the government under the amendment of March 4, 1925, is to be distributed as unbequeathed personal property to the next of kin under the Decedent Estate Law of this state.

The case of Salzer v. United States, supra, is relied upon

by the administrator as sustaining the decision of the surrogate herein, to the effect that the father and mother of the decedent are entitled to the whole fund as the next of kin of the deceased soldier, in existence at the time of the death of the soldier's widow, the beneficiary named in the policy. In that case it was said that the proceeds of the policy upon the death of the beneficiary could only be paid to a person who could "trace his claim directly from the insured." That case was decided prior to the amendment of March 4, 1925, which abolished the provision of the act requiring the fund to be distributed to the next of kin of the insured but limited the right to take to certain named relatives. The amendment of March 4, 1925, had the effect of nullifying the decision in the Salzer Case from the time the amendment took effect.

Under the said amendment the fund is payable to the estate of the insured. The distribution of the insured's estate is left to the Decedent Estate Law of the state. Nowhere in the act as amended is it provided that the distributees shall be determined as of the date of the death of the beneficiary named in the insurance certificate. Generally there can be no question but what a fund that comes into the estate of a decedent after his death should be added to the estate left by the decedent and distributed according to section 98 of the Decelent Estate Law.

(3) The next of kin of a person, within the meaning of said section 98, are those persons who were decedent's next of kin at the time of his death. Clark v. Clammann, 160 N. Y. 315, 54 N. E. 709; Doane v. Mercantile Trust Co., 160 N. Y. 494, 55 N. E. 296. The estate of a deceased person comes into existence immediately upon the death of the deceased person and his next of kin entitled to take his estate as distributees are those who are his next of kin at the time of his death.

[fol. 105] In other jurisdictions it has been determined that the distribution of a war insurance fund paid to the estate of a deceased soldier after the death of a beneficiary named in the certificate under the amendment of March 4, 1925, is payable to those who are entitled to take at the date of the death of the deceased soldier. Battaglia v. Battaglia, supra; Perrydore vs. Hester, supra; In Re

Pivonka's Estate, supra; Deeble's Estate v. Tepper et al (Md.), 136 A. 536.

(4) Our conclusion is that under section 98 subd. 7a of the Decedent Estate Law as it read in 1918 (as added by Laws 1921, c. 126 Sec. 2) the father of the deceased soldier is entitled to take one-half of the fund as next of kin of the deceased soldier, and that Hattie R. Tillner, the mother and sole next of kin of Bessie Storum, the wife of the deceased soldier, is entitled to take the other half."

And we find that the courts of other states have reached the same conclusion on the question, as shown by the following cases to-wit:

Palmer et al. v. Mitchell et al. 117 Ohio St. 87, 158 N. E. 187.
Williams et al. v. Eason (Miss) 114 So. 338.
In Re Jacob's Estate (Md.) 138 Atl. 536.
In Re Pavanka's Estate (Iowa) 211 N. W. 246.
Battaglia et al. vs. Battaglia et al. (Tex. Civ. App.) 290 S. W. 296.
In Re Singer's Estate (Wis.) 213 N. W. 479.

The only departure has been by the Court of Appeals of Kentucky, in Sutton's Ex'r et al. vs. Barr's Adm'r, 293 S. W. 1075. But we are unable to agree with that opinion but prefer to follow the great weight of authority which we think speaks the correct doctrine.

The effect of the Act of March 4, 1925, was to retroactively constitute as assets of the estate of Lee Ray Jackson, the proceeds of all installments of insurance which had accrued or were to accrue after the death of the beneficiary. And there is no claim by the parties to this action that any different rule applies to the installments becoming due prior to March 4, 1925, and those becoming due thereafter.

[fol. 106] The installments of insurance which accrued to the soldier prior to his death, because of his permanent disability, when finally paid, must be considered as much a part of his estate as any other debt due him which was unpaid when he died. The contract of insurance was between the soldier and his government, and gave to him a vested interest in these installments as they accrued.

The decree of heirship made in the original administration of the estate of Lee Ray Jackson fixed the parties entitled to inherit all his estate, whether the assets were then in the hands of the administrator, or later came into the possession of an administrator de bonis non.

By the doctrine of relation the wife inherited these sums of insurance, and died with them an asset of her estate to be distributed among her heirs in accordance with the decree of heirship made in the administration of her estate by the County Court of Craig County. These heirs do not inherit from her because she was the beneficiary in the policy, as she had no vested interest in the unpaid installments. But inherited through her because these funds when paid became ordinary assets of the estate of Lee Ray Jackson, transmitted by inheritance from him to his wife and child, then the child's interest to its mother, and then by the mother to her heirs.

We therefore conclude that the decree and judgment of the district court in the case should be reversed and remanded with directions to enter judgment in accordance with the views herein expressed.

Concur: Bennett, P. J.; Teehes, V. P. J.; Leach, Foster.

[fol. 107] [File endorsement omitted.]

IN SUPREME COURT OF OKLAHOMA

[Title omitted].

PETITION FOR REHEARING—Filed Mar. 22, 1928

Come now the defendants in error by their attorney William T. Rye, and respectfully represent and state to the court that on the 13th day of March, 1928, a decree and judgment was rendered by this court, acting through its Supreme Court Commission, opinion by Commissioner Reid, holding

1. The heirs of a decedent under the law of descent and distribution are to be determined as of time of decedent's death.

2. Monthly installments due a soldier for permanent and total disability under War Risk Insurance, constitute vested assets of the soldier at the time of his death, and the funds,

no matter when paid by the Government, to his administrator must be distributed to the heirs of the soldier as of the date of his death.

3. Under War Veteran's Act, Section 303, as amended by Act of Congress March 4, 1925, Section 14 (U. S. Comp. St. Sec. 9127½-303), in a case where both the insured soldier and the designated beneficiary died, installments becoming due upon the insurance after the death of the beneficiary, which were commuted and paid by the Government to an administrator de bonis non of the estate of the insured, become ordinary assets of said estate as of the date of the death of the insured and must be distributed to his heirs accordingly.

And the petitioners now come and petition for a rehearing in this case and assign as grounds therefor, as follows:

First. That the decision of the Commissioner is contrary to law, and is contrary to the decisions of the United [fol. 108] States Court, construing a Statute of the United States in regard to War Risk Insurance.

Second: That the Commissioner has elected to found his decision in this case upon the decision of other States, which are contrary to the policy of Congress expressed and declared in this matter, and has largely based this decision upon a decision of a single judge (surrogate) analogous to the Oklahoma Probate Judge, in Re: Ryan's Estate, 222 N. Y. S. 253, and the approval thereof by the Court of Appeals in New York without opinion which shows lack of consideration and lack of reason for sustaining the surrogate's opinion and decision in the matter. The Commissioner thereby ignoring and refusing to follow the decisions of the United States Court construing a United States Statute.

Third. That the decision of this Court is wrong, in that the court, through the Commissioner, has elected to declare the law in this State to be that the heirs of a deceased person who take war risk insurance, are to be determined as of the date of the death of the insured soldier, and not as of the death of the beneficiary of said insurance, all of which is wrong and in this case works a hardship and is not

the proper policy to adopt, which adopting the rule as the commissioner did in this case vests this insurance in the soldier's widow's second husband and in the father and mother of the soldier's widow, to the exclusion of the brother and sisters of the deceased soldier, which holding complained of herein, is contrary to the policy of Congress as expressed in its committee reports and otherwise, and contrary to the policy of Congress as found and declared by the Federal Courts in construing the Statutes for the disposition of War Risk Insurance.

[fol. 109] Fourth. That this decision is wrong for this reason, that the Commissioner in applying the law applicable to this case, namely in applying Section 514 of Title 38, United States Code, claims to find therein express reversal of the policy of Congress in such matters, although the Statute is silent thereon.

Fifth. The decision is wrong for the reason that it directs the distribution of this insurance fund to the soldier's wife's second husband and to the father-in-law and mother-in-law of the soldier to the exclusion of the blood kin of the soldier, namely, the brother and sisters of the soldier, and

Sixth. The decision is further wrong for the reason that it assumes that this fund, insurance money to be distributed, was a part of the estate of Lee Ray Jackson, the soldier, which is not a fact. Sec. 11301, Compiled Oklahoma Statutes, provides:

"Descent and Distribution.—When any person having title to any estate, not otherwise limited by marriage contract, dies without disposing of the estate by will, it descends and must be distributed in the following manner, * * *"

Lee Ray Jackson did not die having title to this insurance. He died with the insurance payable to his wife, who collected it during her lifetime and she did not die until three years after the death of the soldier. It was not a part of the soldier's estate. It was paid in to the soldier's estate because the Act of Congress provided that it should be, and the Act of Congress also provided that this insurance should be payable to the blood kin of the soldier.

Seventh. The decision of the Commissioner in this case deprives Edith Cheek, nee Jackson, Jewell Braziel, nee Jackson, and Emmett Jackson, of property without due process of law and without any compensation, and deprives them of right, title, privilege or immunity claimed by them under the Laws of the United States, to-wit, under Title 38, U. S. Code, and more definitely, under Section 514 thereof.

[fol. 110] Wherefore defendants in error pray a re-hearing of said cause by this Honorable Court, and that decision of the District Court be affirmed.

William T. Rye, Attorney for Defendants in Error.

Service of copy of this petition for rehearing is acknowledged as made on me this March 21, 1928.

W. H. Kornegay, Attorney for Plaintiff in Error.

[fol. 111] In Supreme Court of Oklahoma

[Title omitted]

Order Granting Rehearing—Mar. 26, 1929

And now on this day it is ordered by the court that the petition for rehearing filed in the above cause be, and the same is hereby granted and the cause set for oral argument on April 23, 1929.

[fol. 112] In Supreme Court of Oklahoma

[Title omitted]

Journal Entry—Sept. 24, 1929

And now on this day the above cause is argued orally and submitted on the record, briefs and oral argument.

(Note by Clerk Supreme Court: On April 2, 1929, the order setting case for argument on Apr. 23, 1929, was set aside and on September 10, 1929, case was re-set for argu-

ment on Sept. 17, 1929, and on September 12, 1929, case was again re-set for argument on September 24th, 1929 (see above order) on Sept. 24, 1929. Gus Pool, Clerk Supreme Court, Oklahoma.)

[fol. 113] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER VACATING ORDER GRANTING REHEARING, ETC.—Dec. 17, 1929

And now on this day it is ordered by the court that the order of March 26th 1929 granting rehearing in the above cause, be, and the same is hereby vacated, the original opinion refiled, and the petition for rehearing denied.

[fol. 114] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

APPLICATION FOR STAY OF MANDATE PENDING APPLICATION FOR CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES—Filed Dec. 21, 1929

Whereas, on December 17th, 1929, by this court, in this matter, on petition for rehearing, a judgment was rendered against the defendants-in-error, and under the rules of this court mandate is due to be sent down after five days, and

Whereas, now the defendants in error advise this Honorable Court that there is involved in this case the construction of an act of Congress of the United States, and that they intend to apply, and are now preparing, in good faith to apply, to the Supreme Court of the United States for a writ of Certiorari to this court in this case to review the same, and the defendants in error believe that there is reversible error in the judgment of this court in this case.

Thers defendants in error now pray this Honorable Court to stay the mandate to the lower court in this case,

pending the application for and determination of the right to a writ of Certiorari by the United States Supreme Court, and if the writ be granted that the mandate be further stayed pending the final determination of the matters therein.

William T. Rye, Attorney for the Defendants in Error, Vinita, Oklahoma.

[File endorsement omitted.]

[fol. 115] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER STAYING MANDATE—Filed Dec. 21, 1929

For good cause shown, it is hereby ordered that the mandate in the above entitled and numbered cause be stayed for a period of sixty days from date in order to enable the defendants in error to make application for Writ of Certiorari to the Supreme Court of the United States.

E. F. Lester, Vice-Chief Justice. E. F. Lester.

Dated December 21, 1929.

[File endorsement omitted.]

[fol. 116] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER—Filed Dec. 23, 1929

For good cause shown, the defendants in error are hereby granted permission to file Application for Leave to file Second Petition for Rehearing in the above entitled and numbered cause.

E. F. Lester, Acting-Chief Justice. E. F. Lester.

Dated December 23, 1929.

[File endorsement omitted.]

[fol. 117] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

APPLICATION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING—Filed Dec. 23, 1929

Come now the defendants in error and respectfully show that heretofore, on the 13th day of March, 1928, a judgment and decision of this court was rendered reversing the judgment of the District Court of Craig County, Oklahoma, in favor of the plaintiffs in error, and against the defendants in error; that thereafter, on the — day of March, 1928, the defendants in error filed in said cause their petition for rehearing, which said petition for rehearing was by the court denied and overruled on the 17th day of December, 1929.

Wherefore defendants in error pray leave to file their second petition for rehearing; a copy of which petition for rehearing is herewith filed and made a part of this application.

Richard L. Wheatley, Jesse L. Ballard, William T. Rye, Attorneys for Defendants in Error.

[File endorsement omitted.]

[fol. 118] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

SECOND PETITION FOR REHEARING

Come now the defendants in error, by their attorneys, Richarl L. Wheatley, Jess L. Ballard and William T. Rye, and respectfully represent and state to the court, that on the 13th day of March, 1928, a decree and judgment was rendered in this court by Supreme Court Commissioner Reid, holding

"1. The heirs of a decedent under the law of descent and distribution are to be determined as of the time of decedent's death.

2. Monthly installments due a soldier for permanent or total disability under War Risk Insurance, constitute vested assets of the soldier at the time of his death, and the funds, no matter when paid by the Government, to his administrator must be distributed to the heirs of the soldier as of the date of his death.

3. Under War Veteran's Act, Section 303, as amended by Act of Congress March 4, 1925, Section 14, (U. S. Comp. St. Sec. 9127½-303) in a case where both the insured soldier and the designated beneficiary died, installments becoming due upon the insurance after the death of the beneficiary, which were commuted and paid by the Government to the administrator de bonis non of the estate of the insured, become ordinary assets of said estate as of the date of the death of the insured and must be distributed to the heirs accordingly."

And thereafter said petition for rehearing was by the court overruled and denied on the 17th day of December, 1929, and on the 21st day of December, 1929, by leave of court first had and obtained so to do the defendants in error file this the second petition for rehearing in which last named petition for rehearing they assign as grounds therefor, as follows:

1. That the decision of the court in this case as it now stands and against which this petition for rehearing is directed, is contrary to the construction placed on the law involved in this case by the Courts of the United States construing Federal Statutes in regard to War Risk Insurance and that the construction so placed by said Federal Courts upon said Act is binding on this court, and these petitioners, defendants in error, in addition to the reasons [fol. 119] assigned in the first petition for rehearing in this case all of which grounds so set forth in the first petition for rehearing are now and hereby incorporated in this petition as fully as if set forth at length herein, the defendants in error respectfully state that since the filing of the opinion in this case by this court, certain cases construing said statute have been handed down by other courts which are authorities and the defendants in error now desire to call this court's attention to such authorities.

The defendants in error most earnestly urge that the conclusion reached by the court in this opinion as it now stands and as against which this petition for rehearing is directed is wrong in that it determines the heirs of Lee Ray Jackson, deceased, when said heirs are not in issue and the determination thereof not necessary to the determination of this case, and the second syllabus which holds that the money must be distributed to the heirs, is wrong, for the reason that the Act of Congress involved in this case, and which is determinative thereof, does not at any place direct the money to be paid to the heirs of the deceased soldier and the bringing in of these heirs and the directing of the money to be paid to them is absolutely wrong. The third syllabus announces the law absolutely wrong in that it declares that War Risk Insurance money is ordinary assets of the estate to be distributed to the heirs of the deceased soldier, as ordinary assets, that is absolutely wrong.

This court predicates the decision upon the amendment of 1924, approved June 7, 1924, 43 Stat. 625 C. 320, wherein was eliminated all reference to the surviving persons in the permitted class. The court in so founding the decision ignores the provision of Section 511 of title 38 U. S. C., which designates the persons to whom such insurance shall be paid, as follows:

"The insurance shall be payable only to the spouse; child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, or sister-in-law, or to any or all of them, and also during total or permanent disability, to the insured person."

The court overlooks the fact that this provision still remains in the law and is the very foundation that caused the enactment of the law. Had it not been for the desire of Congress to protect these people, the Act would never have been passed, and moreover, the court has overlooked the fact that notwithstanding the Amendment of June 7th, 1924, 43 Stat. 625, and the subsequent amendment of March 4, 1925, 43 Stat. 310, that all the rights of the beneficiaries under this insurance were vested upon the death of Mary Lucinda Singleton March 26th, 1923, and that Congress could not deprive these persons, the defendants in error in this case, of their vested right in said money which ac-

Upon rehearing the correctness of the prior decision as to the disposition of the insurance was seriously questioned and this court reversed its prior holding and held that the persons taking this insurance money take as beneficiaries under the law of the United States and not as heirs of any deceased person.

It was held further that the proceeds of war risk insurance passed to the estate of the insured on the death of the beneficiary for distribution to the persons within the permitted class and that distribution is made to such persons not as heirs of the deceased soldier, but as beneficiaries.

The court fully recognizes that this money is a bounty from the Government. It is in the nature of a pension and had it not been for this Federal Relief Act, the Government would have paid the pension to the soldier in the usual way. Upon the soldier's death the pension would terminate. The soldier's widow would have been entitled to a pension under the old pension act, which would terminate upon her death. In the present case a lump sum of $10,000.00 was to be disposed of, but the Government never at any place contemplated or intended that the soldier's wife's second husband or her father and mother should ever receive any of said funds.

We again call this court's attention to the statement of the policy which underlies this insurance, and which Mr. Rayburn of Interstate and Foreign Commission, in his report to Congress made a part of the record in the House Report 130, Part 3, wherein it was said "Speculation in insurance must not be permitted; it must be unassignable and free from the claim of creditors of both the insured and the beneficiary. It must not be payable to any and every one, but to a limited class of relatives," and the report further goes on "The United States Government says to this man (soldier) we will carry that risk at $50.00 per thousand. That gives you the lowest insurance you can get as a sound well man in peace times. If you have a wife, child or mother dependent upon you and you are carrying the insurance, the money goes to them, because you have a personal direct interest in them. Some distant cousin, away off yonder that you may never see, or some uncle, probably living in opulence and does not need the money,

will not get it." Congressional Record, September 8th, 1918.

There has been no change in the spirit of this Act, nor in the spirit of the law, nor in the policy of the Government towards its soldiers.

With the large number of decisions in this country from courts of reputable authority holding that this insurance money never goes to heirs, but only to those persons within the permitted class who take as beneficiaries and not as heirs, and these must be persons who are related to the soldier and for whom it is presumed that the soldier had a solicitude and care for their welfare.

[fol. 122] The writer of this petition can not conceive of any greater injustice being done to a soldier's brothers and sisters than to construe the Act to give the money (War Risk Insurance) to the soldier's wife's second husband and her father and mother to the exclusiion of the soldier's brothers and sisters, with the long list of splendid authorities holding that it should go to these people as beneficiaries. Although here and now there are authorities to the effect that it goes to the soldier's heirs, why place Oklahoma in the category and classification of such erroneous philosophy as to declare that the second husband of the soldier's wife takes to the exclusion of the brothers and sisters of the soldier, when this case is the beginning of the making of the law in this State on such subject. Why do that injustice to the people of this State.

Respectfully, Richard L. Wheatley, Jess L. Ballard, William T. Rye, Attorneys for Defendants in Error.

[fol. 123] Certificate

I, hereby certify that a full, true and correct copy of the foregoing second petition for rehearing and application for leave to file second petition for rehearing, addressed to Honorable W. H. Kornegay, attorney of record for the Plaintiffs in Error, at Vinita, Oklahoma, was deposited by me in the United States Post Office at Vinita, Oklahoma, with postage thereon fully prepaid the 22nd day of December, 1929.

William T. Rye, Attorney for Defendants in Error, Vinita, Okla.

[fol. 124] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER GRANTING SECOND PETITION FOR REHEARING—Feb. 17, 1931

And now on this day it is ordered by the court that the application filed in the above cause for leave to file second petition for rehearing, be, and the same is hereby sustained, the second petition for rehearing is hereby granted and said cause re-submitted.

Kornegay, J., disqualified and not participating.

[fol. 125] IN SUPREME COURT OF OKLAHOMA

17748

CHARLEY SINGLETON et al., Plaintiffs in Error,

vs.

EDITH CHEEK, etc., et al., Defendants in Error

JUDGMENT—Mar. 3, 1931

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be reversed and the cause remanded.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby reversed and the cause remanded with directions to proceed consistent with the opinion filed therein.

Opinion by Clark, J.

[fol. 126] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

No. 17748

In re Jackson Estate

CHARLEY SINGLETON, MAGGIE DAVIS, and GEORGE DAVIS, Plaintiffs in Error,

vs.

EDITH CHEEK, nee JACKSON; JEWEL BRAZIEL, nee JACKSON; Emmett Jackson, by W. M. Tynor, Guardian, and Guy Patten, Administrator, Defendants in Error

Syllabus

1. Monthly installments due a soldier for permanent and total disability under War Risk Insurance, constitute vested assets of the soldier at the time of his death, and when paid by the government to his administrator must be distributed to the heirs of the soldier as of the date of his death.

2. Under War Veterans' Act, Section 303, as amended by Act of Congress March 4, 1925, Section 14 (U. S. Compiled St. Sec. 9127½-303), in a case where both the insured soldier and the designated beneficiary died, installments becoming due upon the insurance after the death of the beneficiary, which were computed and paid by the government to an administrator de bonis non of the estate of the insured, become assets of said estate as of the date of death of the beneficiary and go to the heirs of the insured as of that date and not as of the date of the death of the insured.

Error from District Court, Craig County, Oklahoma

A. C. Brewster, Judge

Action to determine the proper distribution of war risk insurance paid to the administrator de bonis non of the estate of Lee Ray Jackson by the Bureau of War Risk Insurance. Judgment of the trial court is affirmed in part and reversed in part

W. H. Kornegay, attorney for plaintiffs in error.

William T. Rye, Jess L. Ballard, Richard L. Wheatley, attorneys for defendants in error.

OPINION—Filed Mar. 3, 1931

[fol. 127] CLARK, V. C. J.:

This cause presents error from the District Court of Craig County, where said cause was tried on an agreed statement of facts and other documentary evidence. Lee Ray Jackson was a soldier in the late war, and was issued $10,000.00 War Risk Insurance. He died intestate March 21, 1921, and left surviving an infant son, James Leroy Jackson, who was about eight months old, and Mary Lucinda Jackson, his widow. He left no other descendants. James Leroy Jackson died in March, 1922, at about the age of twenty months. Mary Lucinda Jackson married again and became Mary Lucinda Singleton, and died in March, 1923. Prior to the death of Lee Ray Jackson, he was rated by the Bureau of War Risk Insurance as permanently and totally disabled, and there had accrued to him by reason thereof the sum of $455.04, which amount had not been paid to him at the time of his death. This insurance was yearly renewable term insurance, and Mary Lucinda Jackson was the beneficiary under said policy, and after the death of her husband was entitled to monthly payments, as beneficiary under said policy.

The Bureau of War Risk Insurance paid to the administrator of the estate of Mary Lucinda Singleton, née Jackson, the sum of $1,365.12, that being the monthly installments accrued from the date of the death of the insured to the date of the death of the beneficiary.

There was $455.04 of the monthly installments that accrued before the death of the insured after the death of the beneficiary. The remaining unpaid installments were computed to a cash value in the sum of $8,925.00, together with the $455.04, and was paid by the Bureau of War Risk [fol. 128] Insurance to Guy Patten, the administrator de bonis non of the estate of Lee Ray Jackson, deceased, and this is the sum which is in controversy here. At the time of the death of Lee Ray Jackson he left surviving two sisters and a brother. His mother and father having predeceased him. The sisters and brother of Lee Ray Jackson, the deceased insured, claimed this money as heirs of insured. Charley Singleton, husband of the deceased widow and beneficiary, and George Davis and Maggie Davis, father and mother of the deceased widow, claim said fund as heirs of the deceased widow of Lee Ray Jackson. The nearest relatives of the insured are Edith Cheek, Jewel Braziel, and Emmett Jackson, sisters and brother of insured.

The County Court of Craig County, Oklahoma, found in favor of defendants in error, Edith Cheek, Jewel Braziel and Emmett Jackson for the $8,925.00, but awarded the $455.04 to plaintiffs in error, Charley Singleton, George Davis and Maggie Davis. From this finding both parties appealed to the District Court of Craig County, and this court found in favor of the defendants in error, Edith Cheek, Jewel Braziel and Emmett Jackson for all the money, for both the sum of $455.04 and the computed insurance in the further sum of $8,925.00, and from this judgment plaintiffs in error appealed to this court.

This case has been briefed and rebriefed. We have been furnished able and interesting briefs on the question involved here, and many authorities are cited. The contention is made by plaintiffs in error that this money, paid to the administrator de bonis non of the estate of Lee Ray Jackson, became vested assets of his estate at the date of his death and was inherited by his widow and child. Upon the death of the child the widow inherited the child's interest, and upon her death it passed to her heirs; to-wit, [fol. 129] her second husband and her mother and father. With this contention we cannot agree. The $455.04 due the insured upon the date of his death was a vested asset of his estate. It was money due the deceased soldier, and

the right to collect the same vested in his representatives and passed to his heirs, to-wit, his widow and child. Upon the death of the child the widow took the entire sum of $455.04. Upon the death of the widow it passed to her heirs, her second husband and her mother and father.

The monthly instal-ments due the beneficiary, Mary Lucinda Singleton, nee Jackson, were paid by the Bureau of War Risk Insurance to the administrator of her estate, and are not in controversy here. The remaining unpaid installments computed to a cash value in the sum of $8,925.00 were paid to the administrator of the estate of Lee Ray Jackson. This sum became an asset of the estate of Lee Ray Jackson upon the date of the death of the beneficiary by virtue of the Act of Congress of June 7, 1924.

The Act of June 7, 1924, was amended by an act approved March 4, 1925, and thereby section 303 of the Act of June 7, 1924, was amended so as to read:

"Section 303. If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty instal-ments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly instal-ments thereafter payable, said value to be computed as of date of last payment made under any existing award: Provided, That all awards of yearly renewable term insurance which are in course of payment on the date of the approval of this Act shall continue until the death of the person receiving such payments, or until he forfeits same under the provisions of this Act. When any person to whom such insurance is now awarded dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance so awarded to such persons; Provided further, That [fol. 130] no award of yearly renewable term insurance which has been made to the estate of a last surviving beneficiary shall be affected by this amendment; Provided, further, That in cases when the estate of an insured would escheat under the laws of the place of his

residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation. This section shall be deemed to be in effect as of October 6, 1917, U. S. Comp. Stat. Sec. 9127½-303."

For the plaintiffs in error to take this property we must indulge in the fiction that it was the vested asset of the deceased on the date of his death. It only became an asset of the estate and payable to the estate upon the death of the designated beneficiary. The beneficiary didn't take any of this insurance as an heir of the insured, but took it as a beneficiary and was only entitled to those sums that became due and payable.

Under no theory of the law can it be said that a mother and father of the beneficiary, widow of the insured, were the heirs of the insured. Neither can it be said that the second husband of the widow is an heir of the insured, or that the above named parties are in the permitted class. This question was before the Supreme Court of Kentucky in Sutton's Executor v. Barr's Administrator, 219 Ky. 543, in which the Supreme Court of Kentucky held that the heirs of the insured at the date of the death of the beneficiary took the property and not those who were his heirs at the date of his death. This is also followed by the Supreme Court of Kentucky in the case of Sizemore v. Sizemore, Gdn. 2 S. W. (2d) 395.

We are of the opinion that the unpaid instalments computed and paid to the administrator of Lee Ray Jackson go to the defendants in error, the two sisters and brother [fol. 131] of the insured. The cause is therefore reversed and remanded with directions to the District Court to enter judgment in accordance with the views herein expressed.

Lester, C. J.; Hefner, Cullison, Swindall, Andrews, and McNeill, JJ., concur.

Kornegay, disqualified, not participating.

[fol. 132] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

APPLICATION FOR ADDITIONAL TIME IN WHICH TO PREPARE, SERVE AND FILE PETITION FOR REHEARING—Filed Mar. 9, 1931

Come now the plaintiffs in error in the above entitled cause, and hereby make application for additional time in which to prepare, serve and file petition for rehearing on behalf of plaintiffs in error in said cause, and for grounds therefor, show:

That these plaintiffs in error have heretofore been represented in this Court by the Hon. W. H. Kornegay, who has recently been appointed to the position of Judge of this the Supreme Court of the State of Oklahoma, and has assumed, and is now occupying said position, and performing the duties thereof, and is, therefor, disqualified to further represent these plaintiffs in error in this court, or to prepare or present their petition for rehearing, and, in this situation, the attorneys presenting this application, Bierer & Bierer, have been engaged to prepare and present petition for rehearing herein.

That when so employed, since the opinion herein was filed on March 3rd, 1931, said attorneys were actively engaged in the performance of other engagements in which they were already employed, and in performing such duties [fol. 133] and obligations must tend to numerous other cases that have already been set for trial or hearing; and that said attorneys not having previously been engaged in this cause, are not sufficiently familiar therewith on the questions involved therein to be able properly to prepare the petition for rehearing within the time, fifteen days from the date of the decision of the court herein filed, March 3rd, 1931, to prepare, serve and file such petition for rehearing.

Furthermore, in order to lessen the work of the court, they desire to have said petition for rehearing printed, which will take a few days extra, and that in furtherance of justice, they desire, need and should be allowed thirty days additional time in which to prepare such petition for rehearing.

Wherefore the plaintiffs in error pray the time for filing petition for rehearing herein be extended for thirty days beyond the time allowed by the rules of this court, and until the 17th day of April, 1931, to prepare, serve and file the petition for rehearing herein.

Bierer & Bierer, Attorneys for Plaintiffs in Error.

STATE OF OKLAHOMA,
County of Logan, ss:

A. G. C. Bierer, Jr., being first duly sworn, deposes and says: that he is a member of the firm of Bierer & Bierer, Attorneys, of Guthrie, Oklahoma, making on behalf of plaintiffs in error the above application; that he has read and knows the contents of the above and foregoing application, and the statements therein contained are true; that this application is not made for the purpose of delay, but [fol. 134] in order that a fair opportunity for presentation of the rights of plaintiffs in error in said cause may be afforded.

A. G. C. Bierer, Jr.

Subscribed and sworn to before me this 7th day of March, 1931. My commission expires November 5th, 1934. Dorothy Moore, Notary Public. [Seal.]

[fol. 135] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER EXTENDING TIME—Filed Mar. 9, 1931

Now on this 9th day of March, 1931, on application of plaintiffs in error, and for good cause shown, the plaintiffs in error are hereby granted thirty days additional time to that allowed by the rules of the court, and until the 2nd day of April, 1931, in which to prepare, serve and file a petition for rehearing in the above entitled cause, and the Clerk is directed to hold the mandate in said cause until that time, and if said petition for rehearing is filed, until the matter is disposed of by the court.

E. F. Lester, E. F. Lester, Chief Justice.

[File endorsement omitted.]

crued upon the death of Mary Lucinda Singleton, the soldier's remarried widow March 26th, 1923, because the Act, Sec. 415 of Title 38 U. S. C. absolutely preserves all awards of yearly renewable term insurance which are in course of payment on March 4th, 1925, shall continue until the death of the persons receiving such payments, shows clearly an intention of Congress not to upset any rights then vested, for otherwise it would disturb vested rights.

Now, no where in the Act of Congress at any time was it ever contemplated, stated, expressed or implied, that any one should take this bounty from the Government (insurance pension money) and pay it to the soldier's widow's second husband. He has never been placed in the permitted class; nor is the father and mother of the soldier's widow entitled to share therein for they are not the persons intended to be protected by this law, nor by the scheme of the Government's policy of protecting its soldier boys.

[fol. 120] In Tax Commission of Ohio v. Rife, the Supreme Court of Ohio June 13th, 1928, 162 NE 390-393, in the body of the opinion stated:

"The administrator thus becomes the trustee or agent of the Federal Government in passing the funds arising under this policy of insurance to the members of the permitted class, which are beneficiaries."

and again in the same case:

"However, the proceeds of war risk insurance are a different kind of property, different from the ordinary property of a soldier's estate, and are in the nature of benefice or gratuity, bounty or pension affecting the rights of the soldier, as dependents on the one side, and the government of the United States as a part of its war policies, on the other side. This distinct class of property is not subject to creditor's claims or taxation and is solely for the benefit of the soldier and his dependents and next of kin, such assets pass under and by virtue of the Federal Act."

To the same effect is Wanzles Estate 145 Atl. 512; also Watkins v. Hall (W. Va.) 147 S. E. 876; also in Walz v. Walz (Ohio, May, 1929) 166 N. E. 895, the court said in substance these facts:

Soldier died August 9th, 1919. Policy was payable to insured's father and mother, but directed his parents to pay Dorothy, his wife, $28.75 per month out of the payments. Dorothy on May 4th, 1920, assigned and released all her interest in the policy to the soldier's parents; parents later died. Held that unpaid installments were not subject to sale or transfer and Dorothy Walz, wife of the soldier, took the remaining unpaid balance to the exclusion of the heirs of the father and mother.

Petitioners further call attention of the court to the fact that the Veterans' Bureau at Washington, under its rules and regulations and pursuant to its construction of the Law it administers, involved in this case, paid to the administrator of Mary Lucinda Jackson (the remarried widow of the deceased soldier) about $1300.00 of the insurance money, that had accrued between the death of the soldier and the death of the soldier's wife; the Veterans' Bureau decided that the remainder of the insurance money should be paid to the administrator of the estate of the deceased soldier and paid the same to Guy Patten as such administrator of the estate of Lee Ray Jackson, deceased. If the Bureau had thought that this money should be distributed to the heirs of Mary Lucinda Jackson, why on earth didn't they send it all to the administrator of the estate of Mary Lucinda Jackson, and be done with it? Such was not the construction placed upon such Act by the Veterans' Bureau, and its rules and regulations and decisions are entitled to the force of law.

And in this connection we refer to 29 Fed. (2nd) 213; 31 Fed. (2nd) 322; 32 Fed. (2nd) 807; 38 U. S. C. 310; 73 1 Ed. (U. S.) 147-8.

In the case of Cross' Estate, 278 Pac. 414, decided June 4, 1929, the insured left surviving him father, mother, [fol. 121] brothers and sisters. His mother was the beneficiary. After the death of the insured and while the mother was receiving the monthly installments, the father died testate, leaving all his estate to the mother of the soldier. There after April 29th, 1926 the mother of the soldier died, leaving her estate to her sons and daughters share and share alike. In the first decision of this case by the Court of Washington, reported in 266 Pac. 711, it was held that the residue of the insurance money should go to the heirs of the deceased soldier as of the time of his death.

[Endorsed:] No. 17,748. In the Supreme Court of Oklahoma. In Re Jackson Estate. Charley Singleton, et al., Plaintiffs in Error, vs. Edith Cheek, et al., Defendants in Error. Order. Bierer & Bierer, Attorneys for Plaintiffs in Error.

[fol. 136] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER EXTENDING TIME—Filed Mar. 30, 1931

Now on this 30th day of March, 1931, on application of plaintiffs in error, and for good cause shown, the plaintiffs in error are hereby granted ten days additional time and until the 12th day of April, 1931, in which to prepare, serve and file a petition for rehearing in the above entitled cause, and the Clerk is directed to hold the mandate in said cause until that time, and if said petition for rehearing is filed, until the matter is disposed of by the court.

E. F. Lester, Chief Justice.

[File endorsement omitted.]

[Endorsed:] No. 17748. In the Supreme Court of Oklahoma. In re Jackson Estate. Charley Singleton et al., Plaintiffs in Error, vs. Edith Cheek, et al., Defendants in Error. Order. Bierer & Bierer, Attorneys for Plaintiffs in Error.

[fols. 137 & 138] [File endorsement omitted]

[fol. 139] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING AND APPLICATION FOR ORAL ARGUMENT—Filed April 8, 1931

Come now the plaintiffs in error, Charley Singleton, Maggie Davis and George Davis, in the above entitled cause, and state that an opinion was filed herein on March 3, 1931, said opinion being rendered by Mr. Vice Chief Justice Clark for the Court, and concurred in by Chief

Justice Lester, and Justices Hefner, Cullison, Swindall, Andrews and McNeill. Mr. Justice Kornegay disqualified [fol. 140] and did not participate. Said opinion affirmed the judgment of the trial court in part, and reversed it in part, the affirmation covering the principal part of the case.

Plaintiffs in error now move and petition that the Court grant to them a rehearing in this cause, upon the following grounds and reasons, which plaintiffs in error herein show, in this petition more fully set out, to wit:

I

That questions decisive of the cause and duly submitted by counsel have been overlooked by the Court.

II

That said decision is in conflict with a federal statute, to wit: the World War Veterans' Act as amended, and particularly Section 303 thereof, Title 38 U. S. C. A., Section 514, under the proper construction and application of said statute, and Title 38 U. S. C. A., Section 445.

III

Because the conclusion to which the Court arrived made a misapplication of the above said statute.

[fol. 141]

IV

Because the Court has overlooked the action of the United States Veterans' Bureau in making the award of the fund involved in this case, and seeks to review the action of a federal agency, to wit, the United States Veterans' Bureau, in a manner unauthorized by federal law.

V

Because the decision is upon a question of law which was new when the briefs in this case were first filed, but which since that time has been passed upon by the courts of a number of states, and that since said briefs were first prepared and filed numerous decisions have been handed down, all of which are contrary to this Court's opinion, and the Court should hear and consider those decisions before

reaching a conclusion out of harmony with that of other states.

The grounds for this petition, provided for by the rules of this Court for the correction of errors in decisions which decide the right of litigants before this Court, will be more fully and specifically treated in the argument and authorities which follow.

[fol. 142] Statement of Facts

This is an action to determine the proper distributees of a fund of money derived from the United States Government in payment of the commuted value of monthly installments of War Risk Insurance coming due after the death of the beneficiary, which fund has been paid to the administrator of the estate of the insured.

Lee Ray Jackson was a soldier in the late war, and was issued $10,000.00 War Risk Insurance. He died intestate March 21, 1921, and left surviving an infant son, James Leroy Jackson, about eight months old, and Mary Lucinda Jackson, his widow. He left no other descendants. The infant son died in March, 1922, the widow, Mary Lucinda Jackson, married again, and became Mary Lucinda Singleton, wife of the plaintiff in error, Charley Singleton, and she died in March, 1923.

After the death of Lee Ray Jackson his estate was duly administered in the County Court of Craig County, in which county he resided at the date of his death. On October 9, 1922, the county court made an order distributing his estate and determining his heirs to be Mary Lucinda [fol. 143] Jackson, his widow, and James Leroy Jackson, his child, and determining each to be entitled to one-half of the decedent's estate. At that time it had not been discovered that Lee Ray Jackson was entitled to any War Risk Insurance. Subsequently, it was determined by the United States Veterans' Bureau, Department of War Risk Insurance, that Lee Ray Jackson was permanently and totally disabled while his insurance was in force, and that at his death there had accrued to him, by reason thereof, the sum of $455.04, which amount had not been paid to him at the time of his death, nor during the administration proceeding. This insurance was yearly renewable term in-

surance, and Mary Lucinda Jackson was the designated beneficiary thereunder, and after the death of the insured she was entitled to monthly payments, as beneficiary under said policy.

The Bureau of War Risk Insurance paid to the administrator of the estate of Mary Lucinda Singleton, née Jackson, the sum of $1,365.12, that being the monthly installments accrued from the date of the death of the insured to the date of the death of the beneficiary, and that [fol. 144] sum admittedly belonged to the beneficiary and is not in controversy in this cause.

When it was discovered that Lee Ray Jackson and his heirs were entitled to some money from his War Risk Insurance policy, the administration of his estate was reopened, and the $455.04, the amount of monthly installments that accrued before the death of the insured, was paid to the administrator of the insured, one Guy Patten, one of the defendants in error. The remaining unpaid installments after the death of the beneficiary, insured's widow, were commuted to a cash value in the sum of $8,925.00, which was also paid by the Bureau of War Risk Insurance to Guy Patten, the administrator de bonis non of the estate of the insured, and this is the sum which is in controversy here. When this sum of $8,925.00 was paid to Jackson's administrator, the United States Veterans' Bureau passed upon the distribution thereof, as shown by a letter from the Director, appearing in the record here at page 36 of the case-made, stating that this sum had been authorized for payment to the administrator, to be distributed to the heirs in accordance with the law of the State, and that under the existing Federal Statutes the [fol. 145] Bureau must pay this sum to the estate, who should distribute same in accordance with the intestacy laws of the State of the insured's last legal residence.

The sum of $455.04, installments accrued before the death of the insured, was formerly also in controversy, but we understand that defendants in error admitted some time ago that this fund should go to insured's estate, for distribution to his heirs as of the date of his death, and this Court properly held in its said opinion of March 3, 1931, that that fund should be so distributed, reversing the trial court to that extent. Plaintiffs in error submit that said opinion is plainly right in that particular, and the

controversy here is over the sum of $8,925.00, paid to the estate of Lee Ray Jackson, the insured, representing the value of installments of insurance coming due after the death of the beneficiary.

The insured, Lee Ray Jackson, was also survived by two sisters and a brother, who are defendants in error in this cause, and they claim this money. The Court states in its said opinion of March 3, 1931, that they claim as heirs of [fol. 146] said insured. Upon their briefs it would seem rather that they claim as beneficiaries under former Acts of Congress before the later amendments providing for the distribution of the insurance after the death of the beneficiary to the next of kin of the insured within the permitted class of beneficiaries. Anyway, they claim the fund.

The only child of the insured, James Leroy Jackson, left surviving at his death his mother, Mary Lucinda Jackson, as his only heir. At the death of Mary Lucinda Jackson, mother of James Leroy Jackson and widow of Lee Ray Jackson, the insured, she left surviving her as her heirs and next of kin, Charley Singleton, her second husband, and George Davis and Maggie Davis, her father and mother, plaintiffs in error herein, who claim said fund as heirs and next of kin of said widow of said insured, and, through her, heirs of said insured.

The County Court of Craig County, Oklahoma, found in favor of defendants in error for the $8,925.00, and in favor of plaintiffs in error for the $455.04. On appeal the District Court of Craig County found in favor of defend- [fol. 147] ants in error for both sums. Plaintiffs in error appealed to this Court.

The Court, in an opinion by the Commission, prepared by Mr. Commissioner Reid, and concurred in by Bennett, P. J., Teehee, V. P. J., Leach and Foster, filed on March 13, 1928, held that both funds should go to plaintiffs in error.

A petition for rehearing was filed, and on March 26, 1929, an order was made granting a rehearing. On December 17, 1929, an order was made vacating the order of March 26, 1929, granting the rehearing, ordering the original opinion refiled and ordering the petition for rehearing denied. Subsequently, leave was granted to file a second petition

for rehearing on the part of the defendants in error, and they did file such a petition.

The present decision by the Court, of March 3, 1931, in favor of defendants in error as to the $8,925.00 fund treats the case as one of first decision by the Court, and it is the first decision on appeal from the district court which has been in favor of the defendants in error.

The case presented briefly is this:

[fols. 148 & 149] Shall a fund, representing the commuted value of installments of War Risk Insurance accruing after the death of the designated beneficiary, paid to the estate of the insured under the Act of Congress applicable, be distributed to the heirs or next of kin of the insured as of the date of his death or as of the date of the death of the beneficiary?

Perhaps, an additional question is raised as to whether the fund should be paid to the heirs or next of kin of the insured, as such, or to those persons among the next of kin of the insured who would fall within the permitted class of beneficiaries under the Acts of Congress, but in our view of the case this Court has got past that latter question by its holding in the opinion of March 3, 1931, that the Act of Congress of March 4, 1925, amending the World War Veterans' Act, applies to this case, and that the insurance is payable to the estate of the beneficiary and becomes an asset of said estate.

[fol. 150] We respectfully pray that the Court grant a rehearing in this case, and as it is important and as we contend that while the Court has rightly determined that the World War Veterans' Act, as amended in 1925, should be applied to the case, still it has wrongly applied that statute and has misinterpreted and misapplied the law governing distribution of the fund involved as a matter of the law of intestate succession, and has overlooked controlling questions presented by counsel in the case, and has overlooked controlling decisions upon the law involved from the highest courts of all the other states which have passed upon the question, we pray that we be granted an oral argument upon this petition for rehearing, in order that the Court and all its members may fully hear us upon our contention that grave injustice will result and a gravely erroneous precedent be established if the opinion

of the Court of March 3, 1931, is allowed to stand. We ask that a date be set for the hearing of this cause upon oral argument upon this petition for rehearing, and by the [fols. 151 & 152] service of this petition, we notify counsel of said request for oral argument.

Further, inasmuch as Mr. Justice Kornegay has disqualified in this case, and inasmuch as it is *is* a case of far reaching importance in settling the law of the State of Oklahoma on these important questions, becoming more vital every day as new War Risk Insurance cases arise, we make a further request of the Court. This is a case that should be heard, and fully heard, and duly deliberated upon by the full bench of this high Court. Accordingly, we ask that the Court certify Mr. Justice Kornegay's disqualification to his excellency, the Governor of Oklahoma, and ask that a special justice be appointed to sit and hear this case with the other members of the Court, and that the full bench participate in the rehearing of this case and in its determination.

Bierer & Bierer, Attorneys for Plaintiffs in Error.

[fol. 153] In Supreme Court of Oklahoma

[Title omitted]

Certification of Disqualification—Filed April 9, 1931

W. H. Kornegay, now a member of the Supreme Court, by reason of the fact that he was of counsel in the above entitled case, hereby certifies his disqualification to act as judge in the matter, on this the ninth (9th) day of April, 1931.

W. H. Kornegay.

[File endorsement omitted.]

[fol. 154] #17,748

State of Oklahoma, Department of State

[Great Seal of the State of Oklahoma, 1907]

R. A. Sneed, Secretary of State

To all to whom these Presents Shall Come, Greeting:

I, R. A. Sneed, Secretary of State, of the State of Oklahoma, do hereby certify that the following and hereto at-

tached is a true copy of appointment of special judge of the Supreme Court in re Jackson Estate, filed in this office on the 9th day of April, 1931, at 2:55 o'clock, the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of State. Done at the City of Oklahoma City, this ninth day of April, A. D. 1931.

R. A. Sneed, Secretary of State. (Great Seal of the State of Oklahoma, 1907.)

Filed in Supreme Court of Oklahoma Apr. 9, 1931. Gus Pool, Clerk.

[fol. 155] 1039

W. O. Burton, Special Judge of the Supreme Court

Re Jackson Estate

Secretary's Memorandum

Oklahoma City, State of Oklahoma, Secretary's Office

This instrument was filed for record this 9 day of April, A. D. 1931, at 2:55 o'clock P. M. Recorded in —, Executive Record No. —, at Page —.

R. A. Sneed, Secretary of State, by J. Dahlgren.

[fol. 156] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

APPOINTMENT OF SPECIAL JUDGE OF THE SUPREME COURT—Filed April 9, 1931

Whereas, In the Supreme Court of the United States, in a cause therein now pending, viz., "In Re: Jackson Estate—Charley Singleton, Maggie Davis and George Davis, Plaintiffs in Error, v. Edith Cheek née Jackson, Jewel Brazeel, née Jackson, Emmett Jackson, by W. M. Tynor, Guardian, and Guy Patten, Administrator, Defendants in Error, No.

17,748", Justice W. H. Kornegay, now a member of the Supreme Court, has, on this the 9th day of April, A. D. 1931, disqualified himself to act as Judge in the matter, by reason of the fact that he was of counsel in the said cause; Now, therefore, because of said disqualification of the said Justice W. H. Kornegay, I do hereby appoint and commission W. O. Burton, Esquire, of Muldrow, Oklahoma, a member of the Bar of this State, possessing the same qualifications as the members of such Court, to sit as Special Justice in said cause.

In testimony whereof, witness my hand, at Oklahoma City, Oklahoma, on this, the 9th day of April, A. D. 1931.

By the Governor of the State of Oklahoma:

Wm. H. Murray.

Attest:

R. A. Sneed, Secretary of State. (Great Seal of the State of Oklahoma. 1907.)

[File endorsement omitted.]

[fol. 157] I, W. O. Bruton, Special Justice in cause No. 17748, do solemnly swear (or affirm) that I will support, obey, and defend the constitution of the United States, and the constitution of the State of Oklahoma, and will discharge the duties of my office, with fidelity; that I have not paid, or contributed, either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not, knowingly, violated any election law of the State, or procured it to be done by others in my behalf; that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law, and I further swear (or affirm) that I will not receive, use or travel upon any free pass or on free transportation during my term of office.

W. O. Bruton.

Subscribed and sworn to before me this the 10th day of April, A. D. 1931. E. F. Lester, Chief Justice.

Attest:

Gus Pool, Clerk of the Supreme Court of Oklahoma, by Reuel Haskell, Jr., Deputy. (Seal Supreme Court, State of Oklahoma.)

[fol. 158] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

JOURNAL ENTRY—May 5, 1931

(Kornegay, J., disqualified, and W. O. Bruton, Special Justice, sitting in this case.)

And now on this day the above cause is argued orally and submitted on the record, briefs and oral argument.

[fol. 159] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—June 30, 1931

And now on this day it is ordered by the court that the petition for rehearing filed in the above cause be, and the same is hereby denied.

[fol. 160] [File endorsement omitted.]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

APPLICATION FOR ORDER STAYING MANDATE PENDING PETITION FOR WRIT OF CERTIORARI—Filed July 3, 1931

Come now Charley Singleton, Maggie Davis and George Davis, plaintiffs in error in the above styled cause, and respectfully pray that an order be made and entered by the Court, or a Justice thereof, staying the mandate of this Court upon its decision in said cause for a period sufficient

to allow plaintiffs in error to prepare and present a petition to the Supreme Court of the United States of America for a writ of certiorari in said cause and for said petition to be presented and acted upon.

In support of said application, plaintiffs in error show it is their intention, in good faith, to proceed forthwith and diligently to prepare and present said petition for certiorari.

Plaintiffs in error believe that the decision of said cause involves a Federal question and the determination of the rights of plaintiffs in error under a Federal Statute, and that plaintiffs in error have good ground for said application for certiorari, and that it is necessary to the complete and proper determination of the rights of plaintiffs in error that said mandate be stayed and time be extended until said petition for certiorari can be properly prepared [fol. 161] and presented.

Bierer & Bierer, Attorneys for Plaintiffs in Error.

[fols. 162 & 163] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER STAYING MANDATE—Filed July 3, 1931

Now, on this 3rd day of July, 1931, for good cause shown, it is hereby ordered that the mandate in the above cause upon the Court's decision of March 3rd, 1931, upon which petition for rehearing was by the Court denied on June 30th, 1931, be stayed and held by the Clerk of this Court for a period of ninety (90) days from this date, pending application by plaintiffs in error to the Supreme Court of the United States of America for a writ of certiorari for a review of said cause, and if said application for certiorari be filed and received in the Supreme Court of the United States of America, that said mandate be further stayed until said cause is there disposed of.

E. F. Lester, Chief Justice.

[File endorsement omitted.]

[Endorsed:] No. 17748. In the Supreme Court of the State of Oklahoma. In re: Jackson Estate, Charley Single-

ton, et al., Plaintiffs in Error, vs. Edith Cheek, et al., Defendants in Error. Order Staying Mandate.

[fol. 164] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 2, 1931

The petition herein for a writ of certiorari to the Supreme Court of the State of Oklahoma is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1320)

FILE COPY

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CHARLES ELMORE CR
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931.

No. 403

CHARLEY SINGLETON, MAGGIE DAVIS AND GEORGE DAVIS, PETITIONERS,

vs.

EDITH CHEEK, NÉE JACKSON; JEWEL BRAZIEL, NÉE JACKSON; EMMETT JACKSON, BY W. M. TYNOR, GUARDIAN, AND GUY PATTEN, ADMINISTRATOR, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA AND BRIEF IN SUPPORT THEREOF.

A. G. C. BIERER,
A. G. C. BIERER, JR.,
Counsel for Petitioners.

BIERER & BIERER,
Guthrie, Oklahoma,
Of Counsel.

(36,217)

INDEX.

SUBJECT INDEX.

	Page
Petition:	
Caption	1
Statement	2
Rulings of the courts below	5
Questions presented	8
Jurisdiction	10
Reasons for granting certiorari	11
Precedent	14
Conclusion	15
Brief:	
Opinions below	19
Jurisdiction	19
Facts	21
Argument:	
1. The controlling Federal statute has been misconstrued	21
2. Award of the United States Veterans' Bureau precludes review by the State court	33
3. The court below has misconstrued the Federal statute defining permitted beneficiaries	36
Conclusion	37
Cases Cited:	
Battaglia vs. Battaglia (Tex. App.), 290 S. W., 296	30
Branch Banking & Trust Co. vs. Brinkley, 196 N. Car., 40; 144 S. E., 530	30
Condon vs. Mallan, 58 App. D. C., 371; 30 Fed., 2d, 995	30, 31
Cross Estate, 152 Wash., 459; 278 Pac., 144	28
Dempster Estate, 247 Mich., 459; 226 N. W., 243	30
Eblen vs. Jordan, 161 Tenn., 509; 33 S. W., 2d, 65	30
Funk vs. Luithle, 58 N. Dak., 416; 226 N. W., 595	30
Fisher's Estate, In re, 302 Pa., 516; 153 Atl., 736	28
Grady vs. Holl, 199 N. Car., 666; 155 S. E., 565	30
Greiner's Estate, In re, 195 Wis., 332; 218 N. W., 437, 438	34
Hallbom Estate, In re, Hallbom vs. Pagel, 178 Minn., 402; 229 N. W., 344	14, 28, 31
Harris Estate, In re, 229 N. W., 344	28
Hogan's Estate, In re, — Utah, —; 297 Pac., 1007	29, 32
Johnson's Estate, In re, 154 S. Car., 359; 151 S. E., 573	30

Page

McQuade's Estate, In re, 88 Colo., —; 296 Pac., 1023..... 29, 32
Moss vs. Moss, 158 S. Car., 243; 155 S. E., 597..... 30
National Union Bank vs. McNeal, 148 S. Car., 30; 145 S. E., 549 30
Pagel, Adm'r, vs. McLean, Adm'r, 282 U. S., —; 75 L. Ed., Adv. Sheets, 531..... 15
Palmer vs. Mitchell, 117 Ohio St., 87; 158 N. E., 187; 55 A. L. R., 556..... 30
Pivonka's Estate, 202 Iowa, 855; 211 N. W., 246; 55 A. L. R., 570..... 29, 31
Price vs. McConnell, 153 Va., 567; 149 S. E., 515..... 30
Pruden's Estate, In re, 199 N. Car., 256; 154 S. E., 7.... 30
Robbin's Petition, 126 Me., 555; 140 Atl., 356..... 30
Root's Estate, In re, Root vs. Childs, 58 N. Dak., 422; 226 N. W., 598..... 30, 34
Ryan's Estate, In re, 222 N. Y. S., 253 and 891..... 30
Shultz Estate, In re, 96 Pa., 514..... 30
Sizemore vs. Sizemore, 222 Ky., 713; 2 S. W., 2d, 395..... 28
Singer vs. Tikalsky, 192 Wis., 524; 213 N. W., 479..... 30
Silberschein vs. United States, 278 U. S., 255..... 12
Sims vs. Arehart, 254 Ill. App., 219..... 30
Smallwood, In re, 156 Tenn., 222; 300 S. W., 572..... 30
Storum's Estate, In re, 221 N. Y. S., 771..... 30, 31
Sutton's Ex'r vs. Barr's Adm'r, 219 Ky., 548; 293 S. W., 1075 28
Tax Commission of Ohio vs. Rife, 119 Ohio State, 83; 158 N. E., 187..... 28
Tolbert vs. Tolbert, 41 Ga. App., 737; 154 S. E., 655..... 30
Turner vs. Thomas, Tex. App., 30 S. W., 2d, 558..... 30
United States vs. Williams, 278 U. S., 255..... 12, 35
Wade vs. Madding, 161 Tenn., 88; 28 S. W., 2d, 642..... 30
White vs. United States, 270 U. S., 175..... 26
Whaley vs. Jones, 152 S. Car., 328; 149 S. E., 841..... 30
Williams vs. Eason, 148 Miss., 446; 114 So., 338; 55 A. L. R., 574 30
Woodworth vs. Tepper, 152 Md., 382; 136 Atl., 536; 55 A. L. R., 578..... 30, 31

Statutes Cited:

The World War Veterans' Act:

Sec. 308, 38 *U. S. C. A.*, 514; Act of June 7, 1924, C. 320, Sec. 308, 43 Stat., 625..... 2, 5, 6, 7, 8, 10, 20, 23, 24, 28, 32, 37

Amendment of March 4, 1925, C. 553, Sec. 14, 43 Stat., 1310 ..... 2, 5, 6, 7, 8, 10, 20, 23, 24, 28, 34

Page

Sec. 300, 38 *U. S. C. A.*, 511; Act of June 7, 1924, C. 320, Sec. 300, 43 Stat., 624; Act of March 4, 1925, C. 553, Sec. 12, 43 Stat., 1308; Amd. July 2, 1926, C. 728, Sec. 14, 44 Stat., 798..... 5, 9, 23, 36

Sec. 19, 38 *U. S. C. A.*, 445; Act of June 7, 1924, C. 320, Sec. 19, 43 Stat., 612; Act of March 4, 1925, C. 553, Sec. 12, 43 Stat., 1302..... 9, 34

Sec. 22, 38 *U. S. C. A.*, 454; Act of June 7, 1924, C. 320, Sec. 22, 43 Stat., 613..... 28

The War Risk Insurance Act:

Act of October 6, 1917, C. 105; 40 Stat., Part 1, page 409, Sec. 402..... 21

Amendment, 1919, 41 Stat., 375..... 22

40 *Statutes at Large*, 401..... 5, 9, 22, 36

The Judicial Code. Sec. 237 (*b*):

28 U. S. C. A., 344 (*b*); R. S., 690, 709; March 3, 1911, C. 231, Secs. 236, 237, 36 Stat., 1156; December 23, 1914, C. 2, 39 Stat., 726; February 17, 1922, C. 54, 42 Stat., 366; February 13, 1925, C. 229, Sec. 1, 43 Stat., 937 ..... 10, 19

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 403

CHARLEY SINGLETON, MAGGIE DAVIS AND GEORGE DAVIS, PETITIONERS,

vs.

EDITH CHEEK, NÉE JACKSON; JEWEL BRAZIEL, NÉE JACKSON; EMMETT JACKSON, BY W. M. TYNOR, GUARDIAN, AND GUY PATTEN, ADMINISTRATOR, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

The petition of Charley Singleton, Maggie Davis, and George Davis, petitioners, respectfully shows to the Court:

That this is a petition for writ of certiorari to review a decision and judgment of the Supreme Court of the State of Oklahoma in cause No. 17748 therein, entitled "*In re* Estate of Lee Ray Jackson, deceased;

Charley Singleton, Maggie Davis, and George Davis, plaintiffs in error *vs.* Edith Cheek, née Jackson; Jewel Braziel, née Jackson; Emmett Jackson, by W. M. Tynor, guardian, and Guy Patten, administrator, defendants in error."

The case is one to determine the distribution of the commuted balance of installments of war-risk insurance accruing after the death of the designated beneficiary of such insurance, under the United States World War Veterans' Act, Sec. 303; Act of June 7, 1924, chapter 320; Section 303; 43 Stat. 625, as amended by Act of March 4, 1925, chapter 553, Sec. 14; 43 Stat. 1310, being title 38, U. S. C. A., Sec. 514, which fund has been paid by the United States Veterans' Bureau to the administrator of the estate of the insured.

Statement of the Case.

The facts in this case are stipulated and agreed (R. 14, 22; 31, 32).

Lee Ray Jackson was a soldier in the late war, and was issued war-risk insurance in the principal sum of ten thousand ($10,000.00) dollars. He died intestate on March the 21st, 1921, a resident of Craig County, Oklahoma, and left surviving him an infant son, James LeRoy Jackson, about eight months old, and his widow, Mary Lucinda Jackson. The infant son died in March, 1922, leaving surviving him his mother, the insured's widow, Mary Lucinda Jackson. The estate of Lee Ray Jackson was administered upon in the County Court of Craig County, Oklahoma, in

case No. 3233, probate, and the administration concluded and distribution made and Mary Lucinda Jackson and James LeRoy Jackson determined to be the sole and only heirs of Lee Ray Jackson, deceased, and Mary Lucinda Jackson alone determined to be his heir, as inheriting the share of her deceased infant son, before the time when the administration was concluded, on October 9, 1922 (R. 4-6).

Mary Lucinda Jackson remarried and became the wife of the petitioner, Charley Singleton, and she died in March, 1923, leaving surviving her, as her sole heirs, the petitioners, Charley Singleton, her widower; Maggie Davis, her mother, and George Davis, her father.

Subsequently, it was determined by the United States Veterans' Bureau, Department of War Risk Insurance, that Lee Ray Jackson was permanently and totally disabled, while his insurance was in force, and that at his death, there had accrued to him by reason thereof, the sum of four hundred fifty-five and 04/100 ($455.04) dollars, and that the insurance continued in force. Previously, it had been thought that Jackson's insurance had lapsed. This was yearly renewable term insurance, and Mary Lucinda Jackson was the designated beneficiary thereunder. On the discovery that the insurance was in force, the administration of the estate of Lee Ray Jackson was reopened, with the respondent, Guy Patten, as the administrator *de bonis non*, and the Veterans' Bureau paid to Guy Patten, as such administrator, the sum of four hundred fifty-five and 04/100 ($455.04) dollars,

representing installments of insurance accruing before the death of the insured, and eight thousand nine hundred twenty-five and no/100 ($8,925.00) dollars, representing the commuted value of installments of insurance moneys accruing after the death of the beneficiary, and paid to the administrator of the estate of Mary Lucinda Singleton, née Jackson, the sum of thirteen hundred sixty-five and 12/100 ($1,365.12) dollars, representing the monthly installments accruing from the date of the death of the insured to the date of the death of the beneficiary, said sum of thirteen hundred sixty-five and 12/100 ($1,365.12) dollars admittedly belonging to the beneficiary and being never in controversy in this case.

The Veterans' Bureau made its award in favor of Guy Patten, administrator of the estate of Lee Ray Jackson, deceased, and directed by letter on behalf of the director of said Bureau that the administrator should distribute same in accordance with the intestacy laws of the State of the insured's last legal residence, and advised that the insurance in the case had then been fully adjudicated by the Bureau (R. 20, 21, 22), said letter being dated November 30, 1925, and the award being made under date of August 18, 1925.

In said administration proceeding, as reopened, the respondents, Edith Cheek, Jewel Braziel, and Emmett Jackson, claim said war-risk insurance moneys as heirs of Lee Ray Jackson, deceased, by reason of being his sisters and brother, respectively. After the death of Mary Lucinda Jackson, said respondents

were the nearest surviving blood relatives to the insured. At the death of the insured, said insured's nearest relatives and heirs were his widow and son, as above set forth.

The parties as here aligned were similarly aligned in groups, as claimants in the county court, and subsequently throughout this litigation, the petitioners claiming as heirs of Lee Ray Jackson, at the date of his death, through his widow and son, and the respondents claiming as heirs of Lee Ray Jackson, determined as of the date of the death of the beneficiary, and as his next of kin at the latter date within the permitted class of beneficiaries under the War Risk Insurance Act (title 38, U. S. C. A., 511). The petitioners, Maggie Davis and George Davis, claim also, as next of kin, within the permitted class of beneficiaries, if distribution should be restricted to that class, as parents of the spouse of the insured, under the Act of Congress (40 Stat. 401).

Rulings Below.

The county court held in favor of the respondents as to the fund of eight thousand nine hundred twenty-five and no/100 ($8,925.00) dollars, the commuted value of insurance falling due after the death of the beneficiary, and in favor of the petitioners as to the fund of four hundred fifty-five and 04/100 ($455.04) dollars, insurance accrued before the death of the insured, and made its decree accordingly, and found and held that under the Act of Congress of March 4, 1925 (title 38, U. S. C. A., 514), the commuted balance of

said insurance money was payable to the estate of the insured and, by virtue of said Act of Congress, vested in the heirs next surviving, within the permitted class of beneficiaries designated by the Act (title 38, U. S. C. A., 511) (R. 24; 22-25). The heirs within the permitted class as aforesaid were determined to be the respondents, Edith Cheek, Jewel Braziel, and Emmett Jackson (R. 24).

The cause was appealed to the District Court of Craig County, Oklahoma, and said District Court held in favor of the respondents on both funds (R. 34-36); sustaining the county court as to the eight thousand nine hundred twenty-five and no/100 ($8,925.00) dollar fund, and reversing it as to the four hundred fifty-five and 04/100 ($455.04) dollar fund. The cause was appealed by the petitioners to the Supreme Court of the State of Oklahoma, said appeal being lodged in said Supreme Court September 3, 1926, upon case-made (R. 3-39) and petition-in-error (R. 1-2).

The Supreme Court of Oklahoma, acting through the Supreme Court Commission, Division No. 1, on March 13, 1928, decided said cause in favor of your petitioners, there plaintiffs-in-error (R. 40), reversing and remanding the cause for proceedings in accordance with the opinion, Reid, C., writing (R. 41-53), the court holding that the installments up to the insured's death should be distributed to the heirs as of the date of his death, and that under the Act of Congress applicable (38 U. S. C. A. 514) installments after the death of the beneficiary became ordinary assets of the estate, as of the date of the death of the insured,

and must be distributed to his heirs accordingly under State law (R. 41).

Respondents filed their petition for rehearing, claiming that the decision violated their rights under the Federal statutes applicable and under the intention of Congress (R. 53-56). This petition was by the court granted (R. 56), the order granting it vacated, the original opinion refiled and the petition for rehearing denied (R. 57). Respondents then applied for stay of mandate pending application to this Honorable Court for certiorari (R. 57), and an order to that effect was accordingly made (R. 58). Subsequently, however, respondents filed their second petition for rehearing (R. 59), which was sustained and the cause resubmitted (R. 66). The State Supreme Court then decided the cause on March 3, 1931, in favor of the respondents as to the larger fund involved, the sum of eight thousand nine hundred twenty-five and no/100 ($8,925.00) dollars, representing installments accruing after the death of the beneficiary, although deciding in favor of the petitioners as to the smaller sum of four hundred fifty-five and 04/100 ($455.04) dollars, representing installments accruing before the death of the insured (R. 66), with an opinion of the court, Clark, V. C. J., writing (R. 67-71), affirming the judgment of the district court in the principal part, and reversing it in the minor part, as stated.

The court held that under the Federal statute, 38 U. S. C. A., 514, the installments accruing after the death of the beneficiary become assets of the estate of the insured, as of the date of the death of the benefi-

ciary, and go to the heirs of the insured, as of that date, and not as of the date of the death of the insured (R. 67), and that this result occurs by virtue of the Act of Congress (R. 70), and that the petitioners are not in the permitted class of beneficiaries under the Act of Congress (R. 71).

Petitioners filed their petition for rehearing April 8, 1931 (R. 74-80), within the time extended by the court (R. 73-74). In said petition for rehearing, petitioners squarely urged petitioners' position theretofore taken, that said decision was in conflict with the Federal statute, and improperly attempted to overturn the award of the Federal agency, the United States Veterans' Bureau. Said petition for rehearing was considered by the State Supreme Court upon its merits, orally argued and briefed, and resubmitted May the 15th, 1931 (R. 83); and thereupon, said decision in the State Supreme Court became final. The mandate from said court was stayed by order of Mr. Chief Justice E. F. Lester, July 3, 1931 (R. 84), pending petition to this Honorable Court for writ of certiorari for review of said cause.

Questions Presented.

Your petitioners believe that the following Federal questions are presented:

(1) Whether title 38, U. S. C. A., Sec. 514 (World War Veterans' Act, Sec. 303), Act of June 7, 1924, C. 320, Sec. 303; 43 Stat. 625, as amended by Act of March 4, 1925, Chapt. 553, Sec. 14; 43 Stat. Sec. 1310, requires distribution of the commuted value of

installments of war risk insurance, accruing after the death of the designated beneficiary, paid by the United States Veterans' Bureau to the administrator of the estate of the deceased insured, to insured's next of kin surviving at the time of such payment, within the permitted class of beneficiaries under said act (38 U. S. C. A., 511), as held by the court below, or whether such funds are distributable to the heirs (next of kin) of the insured, as determined by the laws of descent and distribution of the State of the insured's last legal residence.

(2) Whether an award made by the United States Veterans' Bureau, providing for payment of war-risk insurance funds to an administrator of the estate of a deceased insured, with directions for payment to the heirs of the insured, and providing how said heirs shall be determined, is subject to review by the State courts, as inferentially held by the court below, or whether said award is final and controlling unless challenged by action under title 38, U. S. C. A., Sec. 445, in the United States district court, as contended by petitioners.

Your petitioners believe, also, that a third question is presented, subject however, and inferior to the above two major questions; that is:

(3) Whether the parents of the spouse of the insured soldier take a status as next of kin to the insured, in a nearer class than brothers and sisters of the insured, by virtue of the Act of Congress (40 Stat. 401) defining "parents", for purposes of determining permitted

beneficiaries under war-risk insurance policies, as including parents of the spouse of the insured, as contended by the petitioners, Maggie Davis and George Davis, and denied by the court below (R. 71).

Jurisdiction.

The jurisdiction of this Honorable Court is invoked under Section 237 of the Judicial Code, as amended by Act of February 13, 1925, Sec. 237 (*b*), providing:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had * * * where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or Statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. * * *"

Petitioners in this cause specially set up and claim, and have claimed throughout this litigation, the title and right to the insurance moneys involved in this cause, as proper distributees from the estate of the insured, of said moneys, under and by virtue of the World War Veterans' Act, Section 303, as amended (title 38, U. S. C. A., 514). Petitioners also claim,

as the proper parties to receive said fund under the award of the United States Veterans' Bureau, acting under its commission held and authority exercised under the United States.

Reasons for Granting Certiorari.

Petitioners respectfully submit that writ of certiorari should be granted in this cause for the following reasons:

(1) That the State court has decided a Federal question of substance not heretofore determined by this Court. In support of said reason, petitioners show that the court below, in its opinion, squarely predicates its decision of said cause upon Section 303 of the World War Veterans' Act, as amended by Act of Congress, March 4, 1925, citing U. S. Compiled Statutes, Section 9127½-303, which is the same as 38 U. S. C. A., 514, and holds that the Federal statute requires the payment of war-risk insurance funds commuted from installments accruing after the death of the beneficiary to the heirs of the insured, as of the date of the beneficiary's death.

The court below was quite evidently influenced by and proceeded upon the idea that the proper distributees of this fund must fall within the permitted class of beneficiaries, under the War Risk Insurance Act.

(2) Petitioners urge, as an additional reason for granting certiorari, that the court below has decided a Federal question of substance in a way probably

not in accord with applicable decisions of this Court.

In support of said second reason, petitioners show that the court below has by its decision, without comment in its opinion, refused petitioners' contention that the award of the United States Veterans' Bureau of the funds involved in this cause was final, in the absence of an action in the United States District Court, by the respondents, based on their disagreement with the Bureau's award, under title 38, U. S. C. A., Section 445. This Court, in *United States vs. Williams,* 278 U. S. 255, held that the decision of the director of the United States Veterans' Bureau was final upon a claim for payment of adjusted compensation, under the World War Veterans' Act; that the Bureau has exclusive authority to pass upon claims under that act, and that its decision is conclusive, citing *Silberschein vs. United States,* 266 U. S. 221, 225.

Petitioners submit that the only distinction between adjusted compensation, under the World War Veterans' Act, and War Risk Insurance thereunder, so far as the finality of the Bureau's award is concerned, is that a special action is provided by title 38, U. S. C. A., Section 445, giving any claimant to insurance an action in the Federal district court where a disagreement exists between the claimant and the Bureau, and that otherwise the insurance case and the compensation case take exactly the same rule.

Respondents not having availed themselves of the Federal remedy provided, to contest the Bureau's award directing that the funds be distributed to the

heirs of the insured, as determined under the State law, petitioners contend that the Bureau's award was final; that the State courts exceeded their jurisdiction and authority in refusing the same, and that the opinion of the court below, reaching a holding contrary to the Bureau's award, is in conflict with the decisions of this Court above cited.

(3) Petitioners further suggest that certiorari should be granted in this cause in order that a uniform rule may be laid down, determining the extent to which the applicable Act of Congress, 38 U. S. C. A., 514, controls and defines the persons entitled to receive the commuted balance of war-risk-insurance money, payable after the death of the designated beneficiary, on contracts of yearly renewable term insurance. In support of said reason, petitioners show that the question has many times arisen in various State courts and is a question of important public moment, the subject of much litigation, and involves large amounts of money; that the courts of the various States have differed in their interpretation of said Act of Congress, as to whether distribution must be made by the administrator of the insured to the heirs of the insured, as determined by State law, or to those heirs falling within the permitted class of beneficiaries, for designation as beneficiaries under the War Risk Insurance Act; as to whether said Act of Congress vests said insurance funds in the estate as ordinary assets or otherwise, and as to the period of time and the extent to which said Act of Congress is applicable.

Citation and discussion of such State cases would be too voluminous to be inserted here, but are treated in petitioners' brief, appended to and submitted with this petition. Petitioners submit that a decision by this Honorable Court construing and defining said provision of the World War Veterans' Act would add greatly in settling the law and ending such confusion.

Precedent for Certiorari.

On October 13, 1930, this Court, in its memorandum decision #176, granted certiorari to the Supreme Court of the State of Minnesota, in the case of *Pagel vs. Hallbom*, to review the decision of the Minnesota Court in *Hallbom vs. Pagel*, 179 Minn. 402; 229 N. W. 344. There the Minnesota court had held that a war-risk insurance fund, identical with that in the case at bar, goes into the estate of the insured, for the administrator to act as a conduit to get the fund from the Federal Government to the distributees, as beneficiaries under the War Risk Insurance Act and not as heirs, and that the fund does not become assets of the estate.

On that holding, this Court granted certiorari (282 U. S.—, not yet officially reported); 75 L. ed., advance sheets, 6; 51 S. Ct. 25.

Subsequently, the respondent, Hallbom, died, and the suit was revived, after certiorari was granted, by substitution of her administrator as respondent. On that situation, the court felt that other questions had arisen, which rendered necessary the remanding of the cause to the State court for further proceedings, with-

out passing on the question of distribution there and here involved, and judgment was vacated and the cause remanded by order of this Court, April 13, 1931, in *Pagel, administrator, vs. McLean, administrator,* 282 U. S. — (not yet officially reported); 75 L. ed.; advance sheets, 531.

Petitioners submit that the considerations which induced the court to receive that case for certiorari are also present here, and the necessity of a decision of the questions involved, that the law may be settled as to the effect of said Federal statute, still remains.

Conclusion.

Your petitioners state that the judgment of the Supreme Court of the State of Oklahoma in this cause is final; that it became final upon the overruling of petitioners' petition for rehearing, on June 30, 1931, and not before, and that said decision is erroneous in so far as it awards the fund of eight thousand nine hundred twenty-five and no/100 ($8,925.00) dollars, representing the commuted value of war-risk insurance moneys accruing after the date of the death of the designated beneficiary to the respondents herein; that said decision rests upon a misinterpretation, misapprehension and misapplication of the controlling Federal statute, and that this Honorable Court should require the case to be certified to it for its review and determination under the provision of the Judicial Code providing for certiorari from State courts of last resort, and under the rules of this Court.

WHEREFORE your petitioners respectfully pray that a writ of certiorari be issued, under the seal of this Court, directed to the Supreme Court of the State of Oklahoma, sitting at Oklahoma City, within said State, commanding said court to certify and send to this Court, on a day to be designated, a full and complete transcript of the record and all proceedings of said court had in said cause, to the end that this cause may be reviewed and determined by this Court, as provided by Section 237 (*b*) of the Judicial Code, as amended, or that your petitioners may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with said provision of the Judicial Code, and that said judgment of the said Supreme Court of the State of Oklahoma in said cause, so far as the same determines the distribution of said fund of war-risk insurance moneys accruing after the date of the death of the designated beneficiary, be reversed by this Honorable Court, with directions that said fund be distributed to the petitioners as heirs-at-law of the deceased insured.

A. G. C. BIERER,
A. G. C. BIERER, JR.,
Counsel for Petitioners.

BIERER & BIERER,
Guthrie, Oklahoma,
Of Counsel.

STATE OF OKLAHOMA,
County of Logan, ss:

A. G. C. Bierer, being first duly sworn, on oath deposes and says that he is counsel for the petitioners in

the above cause; that he knows of the above proceedings had, and that the facts stated in the above petition for writ of certiorari are true to the best of his knowledge and belief.

A. G. C. BIERER.

Subscribed and sworn to before me this 22d day of August, 1931.

[SEAL.] CORINNE ESTUS,
Notary Public.

My commission expires Mar. 10, 1934.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 403

CHARLEY SINGLETON, MAGGIE DAVIS AND GEORGE DAVIS, PETITIONERS,

vs.

EDITH CHEEK, NÉE JACKSON; JEWEL BRAZIEL, NÉE JACKSON; EMMETT JACKSON, BY W. M. TYNOR, GUARDIAN, AND GUY PATTEN, ADMINISTRATOR, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA AND BRIEF IN SUPPORT THEREOF.

BRIEF.

In support of the above and foregoing petition for writ of certiorari your petitioners submit their suggestions in the following brief.

Opinions Below.

The court below, the Supreme Court of the State of Oklahoma, wrote two opinions in this cause, the last and final opinion being filed in that court March 3, 1931 (R. 67-71), and this opinion became final upon the court's order denying these petitioners' petition for rehearing, on June 30, 1931 (R. 83). The opinion of the court of March 3, 1931, reversed its former opinion in the case, filed March 13, 1928, written by the Oklahoma Supreme Court Commission (R. 41-53). Neither opinion has been officially reported, but these opinions appear fully in the record and at the pages here indicated.

Jurisdiction.

The grounds upon which we invoke the jurisdiction of this Court are set forth under the heading "Jurisdiction", in the petition on page 10. Jurisdiction is predicated upon Section 237 (*b*) of the Judicial Code, as amended by Act of February 13, 1925, Chapt. 229, Sec. 1; 43 Stat. 937, 28 U. S. C. A. 344. The pertinent provision of the statute is quoted in the petition, page 10.

The decree sought to be reviewed is the final decision of the Supreme Court of the State of Oklahoma, filed March 3, 1931 (R. 67-71), which became final upon the court denying these petitioners' petition for rehearing, without further opinion, on June 30, 1931 (R. 83).

The decision of the court was expressly based upon a construction of the World War Veterans' Act of

June 7, 1924, Chapt. 320, Sec. 303; 43 Stat. 625, as amended by Act of Congress of March 4, 1925, Chapt. 553, Sec. 14; 43 Stat. 1310, appearing as Title 38, U. S. C. A., 514.

That the court rested its decision upon its construction of said Federal statute is apparent from a reading of the opinion, especially the second syllabus (R. 67), and a large part of the opinion itself (R. 69-71).

Petitioners claim to be the rightful distributees of war-risk insurance moneys paid by the United States Government, through its agency, the Veterans' Bureau, to the administrator of the estate of the insured, under said act of Congress, claiming their right and title to said funds under and by virtue of said act as amended March 4, 1925. Petitioners' claim was denied by the court below, said denial being grounded upon the court's interpretation of said Federal statute. Petitioners further claim to be entitled to said moneys under the award made by the United States Veterans' Bureau under its commission and authority exercised under the United States, and this claim was denied without any reference being made thereto in the opinion. These Federal contentions were urged by petitioners throughout the litigation, and in their briefs in the Supreme Court of Oklahoma. Although the petition in error in that court specified errors in general terms, without specific reference to the Federal statutes, still it is evident from the court's opinion that the Federal statutes were passed upon and construed, and the decision rested thereupon. Further, the petitioners in their petition for rehearing in the State Supreme Court expressly raised the Federal

grounds of contention (R. 75, 76), and said petition for rehearing was heard on its merits and orally argued, the Federal grounds being stressed before said State court (R. 83), and said petition for rehearing denied (R. 83).

The Supreme Court of the State of Oklahoma is the highest court of said State in which a decision could be had, and petitioners exhausted their remedies there when they presented their petition for rehearing.

Facts.

The facts are stated in the petition, on page 2 and following it. We emphasize the award of the United States Veterans' Bureau under date of August 18, 1925, awarding the fund involved to the administrator of the estate of the insured, with direction that it be distributed in accordance with the intestacy laws of the State of insured's last legal residence, which was Oklahoma, and advising that the insurance in the case was thus fully adjudicated by the Bureau.

ARGUMENT.

The Controlling Federal Statute Has Been Misconstrued.

In order to understand the effect and significance of the Federal statute involved in this case, a glance at its history is necessary.

The first act of Congress on the subject was the War Risk Insurance Act of 1917, Chapt. 105, Art. 4; 40 Stat. 398, 409, which provided for the issue by the

Government of war-risk term insurance policies, and otherwise provided, so far as material here, that

> "The insurance * * * shall be payable only to a spouse, child, grandchild, parent, brother or sister, * * * or to any or all of them. * * * If no beneficiary within the permitted class be designated by the insured, either in his lifetime or by his last will and testament, or if the designated, beneficiary does not survive the insured, the insurance shall be payable to such person or persons, within the permitted class of beneficiaries as would under the laws of the State of the residence of the insured, be entitled to his personal property in case of intestacy. If no such person survive the insured, then there shall be paid to the estate of the insured an amount equal to the reserve value, if any, of the insurance at the time of his death, calculated," etc. (Section 402).

A section of this act (40 Stat. 401) defined the term "parent" to include father, mother, grandfather, grandmother, step-father and step-mother, whether of the person in the United States service, or of his spouse. The act was amended in December, 1919 (41 Stat. Part 1, page 375), to include uncles, nephews, nieces, brothers, and sisters-in-law, and providing that if no person within the permitted class of beneficiaries survived the insured, his estate should receive the balance of the insurance. Section 15 of that Act provided as follows:

> "That if any person to whom such yearly renewable term insurance has been awarded

dies, or his rights are otherwise terminated after the death of the insured, but before all of the two hundred and forty monthly installments have been paid, then the monthly installments payable and applicable shall be payable to such person or persons within the permitted class of beneficiaries as would, under the laws of the State of residence of the insured, be entitled to his personal property in case of intestacy; and if the permitted class of beneficiaries be exhausted before all of the two hundred and forty monthly installments have been paid, then there shall be paid to the estate of the last surviving person within the permitted class the remaining unpaid monthly installments."

The entire act was amended and re-enacted and extended considerably by the World War Veterans' Act of 1924, Chapt. 320, 43 Stat. 624, 625, Section 303 of that act being the section governing payment of the balance of the insurance upon the death of the beneficiary designated by the insured. That act retained the permitted class of beneficiaries (Sec. 303, 38 U. S. C. A. 511), and carried the provision that in case the beneficiary did not survive the insured, or survived the insured and died before the payment of the full 240 monthly installments, in which the insurance payment was divided, then the balance of said insurance commuted to a present value should be paid to the administrator of the estate of the insured for distribution to such persons within the permitted class of beneficiaries as would, under the laws of the State of residence of the insured, be entitled to his personal proper[illegible] case of intestacy, and in the absence of any

such surviving next of kin, within the permitted class of beneficiaries, then said money should be paid to the estate of the insured.

We emphasize that up to and including the World War Veterans' Act of 1924 the applicable provision of the act of Congress had always provided that these moneys, balance of war-risk insurance after death of designated beneficiary, should go to such persons among the next of kin of the insured as would take by intestacy under State law, limited, however, to persons within the permitted class of beneficiaries under the section of the statute limiting beneficiaries who might be designated by the insured as his beneficiary when he took out his insurance policy, the earlier acts providing for payments direct to such persons, and the act of 1924, providing for payment to the administrator of the insured's estate, for distribution to such persons. Thereafter, however, by the act of March 4, 1925, Chapt. 553, Sec. 14; 43 Stat. 1310, appearing as Title 38, U. S. C. A., 514, the provision of Sec. 303 of the World War Veterans' Act was drastically amended, and was altered to read that these insurance moneys should be paid "to the estate of the insured"; the direction for distribution of the fund from the estate of the insured, to persons within the permitted class of beneficiaries, being entirely eliminated, and the amended act was expressly made retroactive and placed in effect as of October 6, 1917.

The section referred to reads as follows:

> "SEC. 303. If no person within the permitted class be designated as beneficiary for yearly re-

newable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: Provided, That all awards of yearly renewable term insurance which were in course of payment on the date of the approval of this Act shall continue until the death of the person receiving such payments, or until he forfeits same under the provisions of this Act. When any person to whom such insurance is now awarded dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance so awarded to such person: Provided further, That no award of yearly renewable term insurance which has been made to the estate of a last surviving beneficiary shall be affected by this amendment. * * * This section shall be deemed to be in effect as of October 6, 1917."

Under that act, it seems apparent that Congress deliberately abandoned its previous plan of limiting distribution of war-risk insurance funds remaining at the death of the designated beneficiary to persons within the class eligible to be named as beneficiaries by the insured, upon his taking out his policy, and left such moneys to go to the heirs of the insured, that is, to his next of kin, under the State laws of descent and dis-

tribution. These funds, under said amendment, go "to the estate of the insured", and there the congressional direction stops.

Under that amendment, the United States Veterans' Bureau seems to have adopted the obvious construction, as shown by its direction to the administrator in the case at bar, that the funds be distributed in accordance with the intestacy laws of the State of insured's last legal residence (R. 21, 22).

The instant case does not fall within any exception clause in the amendment. The award of insurance in the case at bar was not made until August 18, 1925 (R. 22), after the amendment of March 4, 1925, was in full force and effect. There was no award in the course of payment at that time, and the retroactive provision of the act was fully effective in this case.

We beg leave to digress at this point to state that in the course of this litigation through the court below the contention of respondents at all times was that the amendment of March 4, 1925, was inapplicable as invading vested rights of respondents, and the contention of the petitioners was that said amendment was fully applicable; yet the court below, in its opinion, held the 1925 amendment applicable, and yet by its construction of that amendment reached the conclusion that the respondents should take the fund involved.

That the retroactive provision of the 1925 amendment is a valid and proper exercise of the power of Congress is settled by the opinion of this Court in *White vs. United States*, 270 U. S. 175, in which this Court, Mr. Justice Holmes writing, pointed out that

the certificate of insurance was made subject, in all respects, to any amendatory legislation; that the possibility of changes in rights thereunder, by congressional enactment, or by regulations duly adopted thereunder, was one of the terms and conditions of the insurance contract, and that the amendment was valid and retroactive even though it might deprive those within the permitted class of beneficiaries of the right to take or share in the installments payable after the death of the designated beneficiary. That holding by this Court has been repeatedly followed in State decisions in this class of cases. We deem it unnecessary to encumber this brief with citations of such State cases, in view of the final authority of the decision in the *White* case.

Prior to the 1925 amendment, *supra*, the courts had generally and properly held, under the former acts, that the balance of war-risk insurance funds after the death of the beneficiary should be paid to the insured's next of kin, or to his administrator for the benefit of his next of kin, within the permitted class of beneficiaries laid down by the War Risk Insurance Act and the World War Veterans' Act. Since the amendment, a few cases from State courts have held to the same effect, most of them predicating their decisions expressly upon a supposed policy of Congress to limit the persons who might participate in war-risk insurance moneys, under any circumstances, to persons within the class made eligible as beneficiaries for designation in the insurance contract, with the idea that these persons would be close blood relatives of the insured, and

that Congress intended only such persons to share in these funds.

Such cases are *In re Estate of Hallbom,* 179 Minn. 402; *In re Cross Estate,* 152 Wash. 459; 278 Pac. 144, to which this Court granted certiorari October 13, 1930. Case No. 176, 282 U. S. — (not yet officially recorded); 75 L. Ed. 6; 51 S. Ct. 25. *In re Harris Estate,* 229 N. W. 344; *Sutton's Ex'r vs. Barr's Adm'r,* 219 Ky. 543, 293 S. W. 1075; *Sizemore vs. Sizemore,* 222 Ky. 713, 2 S. W. 2d, 395, and to a certain extent, *In re Fisher's Estate,* 302 Pa. 516, 153 Atl. 736, and *Tax Commission of Ohio vs. Rife,* 119 Ohio State 83, 158 N. E. 187.

These cases proceed upon the theory that the administrator of the estate of the insured is a mere trustee or conduit to get the money from the Government to the particular beneficiaries within the eligible class as beneficiaries of the war-risk insurance acts and policies of Congress, and not as heirs.

Most of such decisions, we submit, arise in cases where the principal point involved is the question of the liability of these funds for debts or taxes, and arise from the desire of the various courts to exempt such funds for such purposes, and where the courts have overlooked another section of the World War Veterans' Act, 43 Stat. 613, 38 U. S. C. A. 454, expressly exempting the funds from liability for debts or taxes.

Both the Ohio case and the Washington case, above referred to, are such cases; the courts departing from a previously expressed contrary rule to reach a de-

cision exempting these funds from the claims of creditors or tax collectors. The two Kentucky cases, *Sutton's Ex'r vs. Barr's Adm'r, supra,* and *Sizemore vs. Sizemore,* are the only cases we have found where the court has adopted the device adopted by the court below, in the instant case, or reading into the Federal statute and into the supposed policy of Congress the thought that the heirs of the deceased insured should be determined as of the date of the death of the beneficiary, and not as of the date of the death of the insured.

All of the above cases, and particularly the Kentucky cases cited, have been expressly refused and repudiated by the courts of a number of other States, in passing upon this question, and are plainly not in accord with the overwhelming weight of authority.

The following authorities all hold that under the 1925 amendment, providing for payment of the balance of war-risk insurance moneys upon the death of the designated beneficiary, to the estate of the insured, such moneys become a part of the estate, and go to the heirs or next of kin of the insured, as determined by the State laws of descent and distribution, like any other asset; it following necessarily as a matter of elementary law that the persons who take, on distribution of the estate, are the heirs of the insured, determined as of the date of death of the insured. *In re McQuade's Estate,* 88 Colo. —, 296 Pac. 1023; *In re Hogan's Estate,* — Utah —, 297 Pac. 1007 (recent cases, official citation not available); *In re Pivonka's Estate,* 202 Iowa, 855, 211 N. W. 246, 55 A. L. R. 570;

Palmer vs. Mitchell, 117 Ohio St. 87, 158 N. E. 187, 55 A. L. R. 556. *In re Storum's Estate,* 221 N. Y. S. 771; *In re Ryan's Estate,* 222 N. Y. S. 253 and 891; *Eblen vs. Jordan,* 161 Tenn. 509, 33 S. W. 2d, 65. *Wade vs. Madding,* 161 Tenn. 88, 28 S. W. 2d, 642; *In re Smallwood,* 156 Tenn. 222, 800 S. W. 572; *Battaglia vs. Battaglia,* Tex. App., 290 S. W. 296; *Turner vs. Thomas,* Tex. App., 30 S. W., 2d, 558; *Condon vs. Mallan,* 58 App. D. C. 371, 30 Fed., 2d, 995. *In re Dempster Estate,* 247 Mich. 459, 226 N. W. 243; *Singer vs. Tikalsky,* 192 Wis. 524, 213 N. W. 479; *In re Pruden's Estate,* 199 N. Car. 256, 154 S. E. 7; *Grady vs. Holl,* 199 N. Car. 666, 155 S. E. 565; *Branch Banking & Trust Co. vs. Brinkley,* 196 N. Car. 40, 144 S. E. 530; *In re Johnson's Estate,* 154 S. Car. 359, 151 S. E. 573; *National Union Bank vs. McNeal,* 148 S. Car. 30, 145 S. E. 549; *Moss vs. Moss,* 158 S. Car. 243, 155 S. E. 597; *Root vs. Childs,* 58 N. Dak. 422, 226 N. W. 598; *Funk vs. Luithle,* 58 N. Dak. 416, 226 N. W. 595; *Williams vs. Eason,* 148 Miss. 446, 114 So. 338, 55 A. L. R. 574; *Tolbert vs. Tolbert,* 41 Ga. App. 737, 154 S. E. 655; *In re Shultz Estate,* 96 Pa. Super., 514; *In re Ogilvie's Estate,* 291 Pa. 326, 139 Atl. 826; *Woodworth vs. Tepper,* 152 Md. 332, 136 Atl. 536, 55 A. L. R. 578; *Price vs. McConnell,* 153 Va. 567, 149 S. E. 515; *Petition of Robbins,* 126 Me. 555, 140 Atl. 356; *Sims vs. Arehart,* 254 Ill. App. 219; *Whaley vs. Jones,* 152 S. Car. 328, 149 S. E. 841.

The Case of *Whaley vs. Jones* from South Carolina, *supra,* was attempted to be brought before this Court on writ of certiorari, and certiorari was denied, 280

U. S. 556; 74 L. Ed. 611, October 14, 1929. The holding was that the commuted value of war-risk insurance installments accruing after the death of the designated beneficiary, paid to the estate of the insured under the Federal statute, as amended in March, 1925, becomes part of the *corpus* of the estate, ceases to be insurance, and becomes assets in the hands of the administrator, to be administered in accordance with State law. The only two cases involving this question, which have been brought before this Court, are *Whaley vs. Jones,* in which certiorari was denied, and *Hallbom vs. Pagel,* 179 Minn. 402, 229 N. W. 344, which went the other way, and on which this Court granted certiorari, as above discussed in this brief and the petition.

The above citation of decided authorities from State courts may seem too voluminous to be listed here. It is no doubt too voluminous for the discussion and analysis of these authorities which we would like to give. We cite the cases because they are all authorities where State courts, in construing the acts of Congress applicable, have sustained the contention which we make here, and we cite them all to show the division of authority in favor of our contention and against the few scattered cases which have taken the contrary view, and which alone would sustain the court below in its conclusion in this case. We recommend especially to the court's attention *In re Pivonka's Estate,* 202 Iowa 855, 211 N. W. 246; 55 A. L. R. 570; *In re Storum's Estate,* 221 N. Y. S. 771; *Woodworth vs. Tepper,* 152 Md. 332, 136 Atl. 536, 55 A. L. R.

578; *Condon vs. Mallan,* 30 Fed., 2d, 995; *In re McQuade's Estate,* 88 Colo. —, 296 Pac. 1023, and *In re Hogan's Estate,* — Utah —, 297 Pac. 1007.

We submit that upon the above decision from various State courts of the land, the overwhelming weight of authority is to the effect that the 1925 amendment to the World War Veterans' Act, 38 U. S. C. A. 514, above cited and quoted, controls the distribution of these war-risk insurance funds upon the death of the designated beneficiary; that it requires the payment of such funds to the estate of the insured, and from there on leaves the distribution and the determination of the distributees to the State laws of descent and distribution. We submit that the intent of Congress, in leaving out of the 1925 amendment the provision always present in previous acts on the subject, that distribution should be limited to persons within the permitted class of beneficiaries, whom the insured might have selected as his beneficiary, is plain, and that any attempt by State courts to read into the act a continuation of the intention and policy of former acts so to limit such distribution is wholly unwarranted.

We submit that an attempt by a State court to read into the act, a provision that the heirs of the insured must be determined as of the date of the death of the beneficiary, or the date when the money actually comes into the estate, on payment by the United States Veterans' Bureau, instead of determining the heirs as of the date of the death of the insured, under elementary general law, is quite unwarranted.

If these conclusions be sound, then petitioners have a right to the war-risk insurance moneys in the hands of the administrator of the estate of the insured in this case, as heirs-at-law of the insured, claiming through his widow and son, as heirs at the time of his death, under and by virtue of the Federal statute directing that these funds be paid to the insured's estate, and leaving the distribution from the estate, to the distributees, to the State law of descent and distribution. That being so, the court below has misconstrued the Federal statute, in holding that it requires the conclusion reached by that court, and directs the determination of the heirs of the insured to be made as of the time of the death of the beneficiary, or that it requires the limiting of the persons to participate in these funds, to persons within the permitted class of beneficiaries named in another section of the Act.

Award of the United States Veterans' Bureau Precludes Review by the State Court.

The United States Veterans' Bureau, in making its award in this case, made the award to the estate of Lee Ray Jackson, the insured, and paid the money to his administrator and directed that it be distributed according to the laws of descent and distribution of the State of Oklahoma (R. 21, 22).

The Bureau stated in the same communication that the matter of this insurance was then fully adjudicated by the Bureau. There was no requirement or even suggestion that the distributees of the fund from the estate must be persons within the permitted class

of beneficiaries, nor that any other rule, than the ordinary and well established rule of descent and distribution, should be adopted in determining the heirs, that established rule being that the date to be looked to for such determination of heirs, was the date of the death of the intestate insured.

A Federal remedy is provided for claimants to war-risk insurance moneys, aggrieved at an award made by the Bureau. That remedy is a suit against the United States, in Federal district court, for the proper district, and is provided by Act of June 7, 1924, Chapt. 320, Sec. 19; 43 Stat. 612, as amended by Act of March 4, 1925, Chapt. 553, Sec. 2; 43 Stat. 1302, being 38 U. S. C. A. 445.

The contention of petitioners is, and has been throughout this litigation, that when respondents failed to bring such an action in the Federal court, the award of the Veterans' Bureau became final and conclusive, and no other standard could be applied for the distribution of these funds than the ordinary and regular State law of intestate succession. This contention is sustained by two decisions of State courts of last resort. *In re Greiner's Estate,* 195 Wis. 332, 218 N. W. 437, 438, and *In re Root's Estate,* 58 N. Dak. 422, 226 N. W. 598, 600; both of which authorities squarely hold that the question of distribution of war risk insurance moneys, accruing after the death of the designated beneficiary, is a matter in the first instance for the United States Veterans' Bureau, with an action in the United States district court for the purpose of establishing a right to the fund, open to

any claimant aggrieved by the Bureau's decision, and not subject to review by State courts.

We feel that this contention is further supported by the decision of this Court in *United States vs. Williams*, 278 U. S. 255. That was not an insurance case, but a case on adjusted compensation, under the World War Veterans' Act, which subject is treated in another section of the same act, and for recovery or determination of which no remedy by court action is provided, as in the case of insurance. Otherwise, the administration of that part of the World War Veterans' affairs, having to do with compensation, is placed in the hands of the Veterans' Bureau, exactly the same as is done with the insurance phases of veterans' administration.

The Bureau is the agency of the United States Government, placed in charge of these matters. The finality of its determinations, with respect to insurance, is less complete than with respect to compensation, only by virtue of the section above cited, which gives a court remedy in case of disagreement, on an insurance claim, between the Bureau and the claimant. That remedy is the only remedy provided by the act. It is a complete remedy in itself.

Respondents not having taken advantage of that remedy, we contend that the Bureau's decision and award is quite as conclusive and final as it would be on a claim for adjusted compensation. This Court held in the *Williams* case that the Bureau's authority is exclusive, and its decision final, unless wholly arbitrary and capricious. We submit that the assumption by the

State courts below of jurisdiction to review the award of the Veterans' Bureau, is not only wholly erroneous and unwarranted, but is probably in conflict with this Court's decision in the *Williams* case, as above set forth.

The Court Below Has Misconstrued the Federal Statute Defining Permitted Beneficiaries.

Petitioners contend that should the court determine that distribution of the war-risk insurance fund involved should be limited to persons falling within the class permitted as beneficiaries by the act of Congress defining that class, to wit, 43 Stat. 624, as amended, 38 U. S. C. A. 511, still two of the petitioners are within that class, and their relation under the acts defining the permitted beneficiaries is closer to the insured than that of the respondent, because the petitioners, Maggie Davis and George Davis, are mother and father, respectively, of Mary Lucindia Jackson, the spouse of Lee Ray Jackson, who survived him at his death, though said spouse is since deceased.

Under the War Risk Insurance Act, the term "parent" is defined, and the definition is "the term 'parent' includes a father, mother, grandfather, grandmother, step-father and step-mother, whether of the person in the service or of the spouse" (40 Stat. 401). Parents are among those made eligible in the permitted class of beneficiaries under the act, 38 U. S. C. A. 511, as above quoted.

The court below in part based its opinion upon the idea, expressed in its opinion (R. 71), that the peti-

tioners are not in the permitted class of beneficiaries. This seems to be a plain misconstruction of the acts defining the permitted class. We make this suggestion here, subject to our principal contentions set forth hereinabove.

Conclusion.

In conclusion, your petitioners submit that the construction of a Federal statute of prime importance is involved in this cause, and that although that construction has been before the State courts in a large and ever-increasing number of cases, this Court has not passed upon it.

The State courts have differed sharply upon the proper construction of the World War Veterans' Act, as to that section here involved, to wit, Section 303, being 38 U. S. C. A. 514, although the tremendous weight of authority laid down by said State decisions is in support of petitioners' contention here. Cases involving this provision of said act are numerous, and their number is steadily growing. They involve the distribution of large amounts of money. The question is one of distinct Federal interest, in that it involves the construction of an act of Congress and the determination of congressional policy in a matter of great national importance, that is, the administration of veterans' affairs under the provisions made by Congress for veterans of the late World War.

The question has not been decided by this Court, and confusion in State decisions is inevitable until

this Court does pass upon the matter, and lay down a clear and fixed rule as to the effect of the 1925 amendment to the Veterans' Act hereinabove referred to, and determine the true meaning of said provision and the extent to which it controls distribution of war-risk insurance funds to which it applies.

The decision of the State court below is not only contrary to the law, as announced by the decisions of other courts generally, which have passed upon the question, but is a plain misconstruction of the controlling act of Congress, and is contrary to sound principles of the laws of descent and distribution, established in this country.

Unless the errors in that decision be corrected by this Court, the effect will be to create regrettable confusion regarding questions of law which are of the utmost importance in the administration of war-risk insurance affairs.

We urge that the questions which this application suggests should be definitely settled by a decision by this Court, and that the intent, purpose and effect of Section 303, of the Veterans' Act, 38 U. S. C. A. 514, should be clearly defined, and the extent to which said section controls the distribution by State probate courts of war-risk insurance moneys involved, should be made clear by an expression of this Court, and that the decision below should be reversed, and this cause remanded to the Supreme Court of the State of Okla-

homa for further proceedings and determination consistent with the law as laid down by this Court.

Respectfully submitted,

A. G. C. BIERER,
A. G. C. BIERER, JR.,
Attorneys for Petitioners.

BIERER & BIERER,
Guthrie, Oklahoma,
Of Counsel.

CORRECTED COPY

SUPREME COURT OF THE UNITED STATES.

No. 403.—October Term, 1931.

Charley Singleton, Maggie Davis, and George Davis, Petitioners,
vs.
Edith Cheek, Née Jackson, Jewel Braziel, Née Jackson, et al.

On Writ of Certiorari to the Supreme Court of the State of Oklahoma.

[February 15, 1932.]

Mr. Justice Sutherland delivered the opinion of the Court.

Lee Ray Jackson, a soldier in the United States army, received a certificate of insurance on his life, issued by the United States through the Bureau of War Risk Insurance on September 5, 1918. His wife, Mary Lucinda Jackson, was named as beneficiary. He died intestate March 21, 1921, a resident of Craig County, Oklahoma, leaving him surviving his wife and a son named James Lee Roy Jackson, a minor child about seven months old. In March, 1922, the child died, of course, intestate; and in March, 1923, the widow died intestate, in the meantime having married Charley Singleton, one of the petitioners. No part of the insurance due under the certificate was paid during the lifetime of the insured or beneficiary; but the sum accrued between March 31, 1921, and March 30, 1923, has since been paid to the administrator of the estate of Mary Lucinda Jackson, who, at the time of her death, was Mary Lucinda Singleton. The amount of insurance due to the insured on account of permanent disability has been paid to the administrator de bonis non of the estate of Lee Ray Jackson. The remaining installments of the life insurance were commuted and the sum thereof, fixed by the War Risk Bureau, was also paid to the administrator last named. Such payments of the disability insurance and the sum of the commuted installments were authorized by the Veterans' Bureau and the administrator directed to distribute the amounts in accordance with the intestacy laws of the state of the insured's last legal residence, an award in favor of the administrator in each case having previously been made. The respondents, Edith Cheek, née Jackson, and Jewel Braziel, née Jackson, are sisters, and Emmett Jackson is a brother of Lee Ray Jackson. Neither his father nor mother sur-

vived him. George Davis and Maggie Davis are the parents of Mary Lucinda Singleton, but neither they nor Charley Singleton are blood kin to the insured.

During her lifetime Mary Lucinda Jackson administered the estate of Lee Ray Jackson, and upon her final report the court having probate jurisdiction found that she was entitled to all of the estate of the deceased Lee Ray Jackson, one-half in her own right, and the other one-half in the right of the minor child above named. A decree of heirship to that effect was duly entered.

In the adminsitration following the death of Mary Lucinda Singleton and the infant son of Lee Ray Jackson, the same court determined that petitioners were entitled to the disability insurance which accrued before the death of the insured, but that respondents were entitled to the commuted value of the insurance falling due after the death of the beneficiary, holding that the commuted balance of such insurance was payable to the estate of the insured, but vested in the heirs next surviving within the permitted class of beneficiaries designated by the War Risk Insurance Act of 1917, c. 105, Art. 4, § 402, 40 Stat. 398, 409, as amended by the World War Veterans' Acts of 1919, c. 16, § 13, 41 Stat. 371, 375, and of 1924, c. 320, §§ 300, 303, 43 Stat. 607, 624, 625. The case was appealed to a state district court where a different judgment was rendered. From that judgment an appeal was taken to the Supreme Court of Oklahoma, where it was twice heard. That court first sustained the petitioners' contention. — Okla. —. Subsequently, upon rehearing, it held in favor of the respondents in respect of the commuted installments accruing after the death of the beneficiary, and in favor of petitioners as to those accruing before her death, following a decision of the Supreme Court of Kentucky in *Sutton's Executor* v. *Barr's Administrator*, 219 Ky. 543, in which that court had decided that the heirs of the insured in being at the time of the death of the beneficiary took the property, and not those who were heirs at the time of the death of the insured.[1] — Okla. —.

By the first Oklahoma decision the doctrine of the Kentucky case, just cited, was expressly disapproved; and, following the view of a number of other state decisions to the contrary, it was held that the decree of the county court in the original adminis-

[1]But see Mefford v. Mefford, 231 Ky. 127, and Mason's Adm'r v. Mason's Guardian, — Ky. —, 39 S. W. (2d) 211, 213-214, which seem to overrule Sutton's Executor v. Barr's Administrator.

tration of the Jackson estate fixed the parties entitled to inherit all his estate, "whether the assets were then in the hands of the administrator, or later came into the possession of an administrator de bonis non"; and that when the widow died these assets became assets of her estate, to be distributed among her heirs. By the second Oklahoma decision this was reversed, upon the authority of the very case which had been distinctly rejected in the first decision.

We are of opinion that the first decision was right, and the second wrong. Undoubtedly, by § 15 of the War Risk Insurance Amending Act of 1919,[2] war risk insurance, after the death of the designated beneficiary, became payable to such person or persons [redacted] within the permitted class of beneficiaries (enumerated in § 402, Act of 1917, as amended by § 13, Act of 1919) as would, under the laws of the state of the residence of the insured, be entitled to his personal property in case of intestacy. The second decision of the state supreme court, therefore, would have been entirely correct if no change had been made in the statute. But a radical change had been effected prior to the award of insurance made by the Veterans' Bureau on August 18, 1925. The Act of March 4, 1925, c. 553, 43 Stat. 1302, 1310, amended § 303 of the World War Veterans' Act of 1924 (which had in turn amended and modified the preceding acts), to read as follows:

"If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid *to the estate of the insured* the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award."

[2] "Sec. 15. That if any person to whom such yearly renewable term insurance has been awarded dies, or his rights are otherwise terminated after the death of the insured, but before all of the two hundred and forty monthly installments have been paid, then the monthly installments payable and applicable shall be payable to such person or persons *within the permitted class of beneficiaries* as would, under the laws of the State of residence of the insured, be entitled to his personal property in case of intestacy; and if the permitted class of beneficiaries be exhausted before all of the two hundred and forty monthly installments have been paid, then there shall be paid to the estate of the last surviving person within the permitted class the remaining unpaid monthly installments."

The amendment, in express terms, was made retroactive so as to take effect as of October 6, 1917, a provision undoubtedly within the power of Congress, for the reasons stated by this court in *White* v. *United States*, 270 U. S. 175.

By that amendment, the rule, which, upon the happening of the contingencies named in the prior acts, limited the benefit of the unpaid installments to persons within the designated class of permittees, was abandoned, and "the estate of the insured" was wholly substituted as the payee. All installments, whether accruing before or after the death of the beneficiary named in the certificate of insurance, as a result, became assets of the estate of the insured upon the instant of his death, to be distributed to the heirs of the insured in accordance with the intestacy laws of the state of his residence, such heirs to be determined as of the date of his death, and not as of the date of the death of the beneficiary. The state courts, with almost entire unanimity, have reached the same conclusion.[3]

Judgment reversed.

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[3]Cases in accord with the text: In re Young's Estate, — Cal. App. —, 1 P. (2d) 523, 525; Garland v. Anderson, 88 Colo. 341, 346 *et seq.*; Condon v. Mallan, 58 App. D. C. 371, 372, 30 F. (2d) 995, 996; Tolbert v. Tolbert, 41 Ga. App. 737; In re Estate of Pivonka, 202 Iowa 855, 858; Robbins, Petitioner, 126 Me. 555; Woodworth v. Tepper, 152 Md. 332, 334; In re Dempster's Estate, 247 Mich. 459, 462-464; Williams v. Eason, 148 Miss. 446, 454-455; Matter of Storum, 220 App. Div. (N. Y.) 472, 476; Trust Company v. Brinkley, 196 N. Car. 40, 44; In re Estate of Pruden, 199 N. Car. 256; Re Root, 58 N. Dak. 422, 428; Palmer v. Mitchell, 117 Ohio St. 87, 93; Ogilvie's Estate, 291 Pa. 326, 331-334; Nat'l Union Bank v. McNeal, 148 S. Car. 30, 37; Whaley et al. v. Jones et al., 152 S. Car. 328, 333 *et seq.*; Moss v. Moss, 158 S. Car. 243, 246; Wade v. Madding, 161 Tenn. 88, 93 *et seq.*; Elben v. Jordan, 161 Tenn. 509, 515; Battaglia v. Battaglia, 290 S. W. (Tex. Civ. App.) 296, 298; Turner v. Thomas, 30 S. W. (2d) (Tex. Civ. App.) 558; In re Hogan's Estate, — Utah —, 297 Pac. 1007, 1008; Price v. McConnell, 153 Va. 567, 572; Stacy v. Culbertson, — Va. —, 160 S. E. 50, 51; Estate of Singer, 192 Wis. 524, 527.

Cases either directly or apparently to the contrary: Sutton's Executor v. Barr's Administrator, 219 Ky. 543; Sizemore v. Sizemore's Guardian, 222 Ky. 713 (The later Kentucky cases of Mefford v. Mefford, 231 Ky. 127, and Mason's Adm'r v. Mason's Guardian, — Ky. —, 39 S. W. (2d) 211, 213-214, apparently disagree with the earlier view.); In re Estate of Hallbom, 179 Minn. 402; Tax Comm. v. Rife, 119 Ohio St. 83; Fisher's Estate, 302 Pa. 516; In re Cross' Estate, 152 Wash. 459.